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RECREATIONAL DEVELOPMENT OF MONTANA STATE LANDS

by

William F. Corwin

Montana State Library

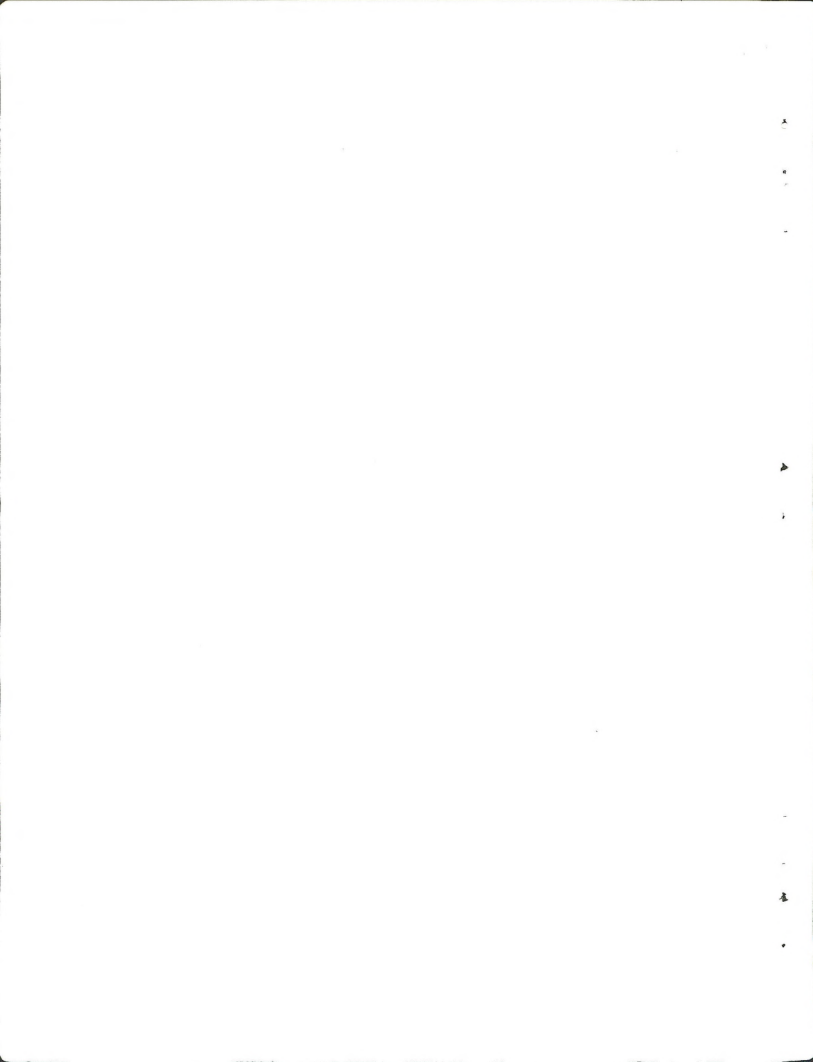


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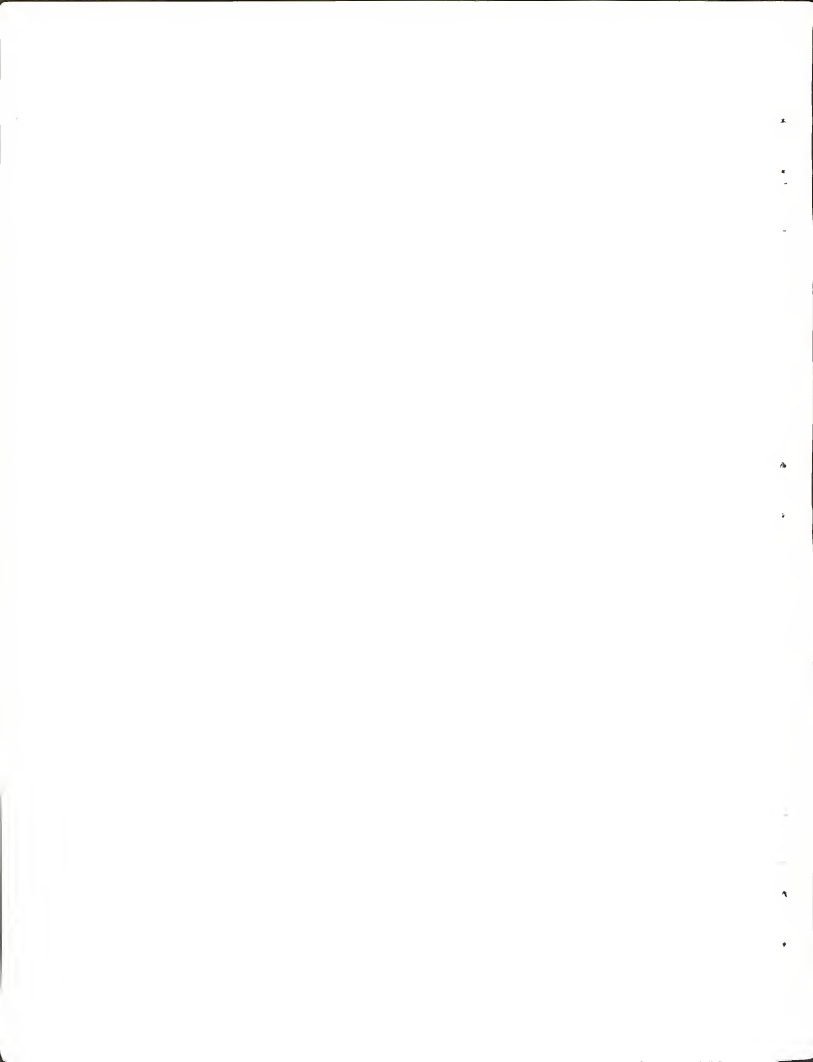
RECREATIONAL DEVELOPMENT OF MONTANA STATE LANDS

William F. Corwin

Sponsoring Agency: Montana Department of State Lands

Project Supervisor: Robert S. Duncan, Acting Administrator  
Resource Division

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Montana Fish & Game Department



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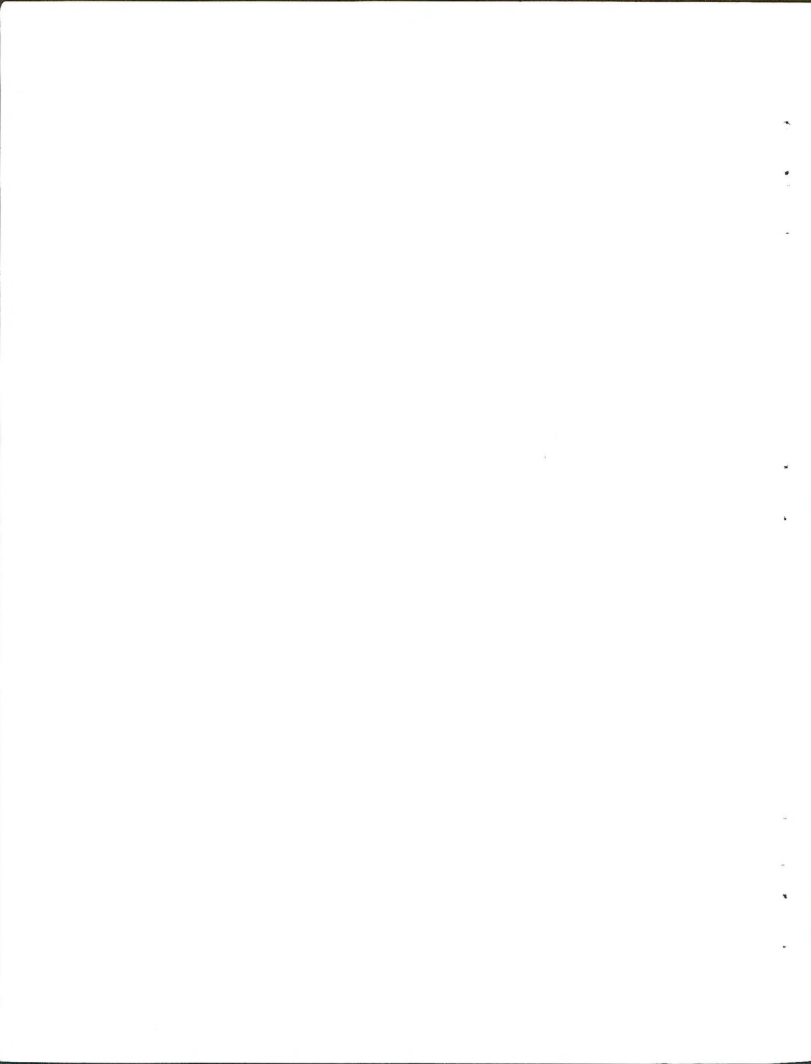
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## Introduction

### I. The WICHE Intern

The author of this report, William F. Corwin, is a second year law student at the University of Colorado in Boulder. This project has been jointly funded and assigned by the Resource Development division of the Montana State Lands Department and the Western Interstate Commission for Higher Education (WICHE). Each WICHE intern is assigned a specific project which he is expected to complete within a twelve week internship project. The projects are selected and developed by the sponsoring agency to which the intern is assigned. The research and writing of this report has been completed during the summer of 1972.

### II. Method of the Study

The objective of this report is to formulate a study of some of the problems which may arise from a general program of recreational development of Montana State Trust Lands. Four topics were isolated to be intensively studied: (a) Land Board activities since 1946 concerning recreational use of State Land. This area is summarized in Chapter 1 of this report. The summary is the result of a reading of the Land Board minutes, 1946-1972; (b) Chapters 2,3, and 4 concerning recreation lease procedures and commercial development, cabin site leasing and public access respectively were studied by means of related readings, responses to questionnaires sent to other Western

States, and interviews with some ranch, farm conservation and civic group representatives in Montana. Because of the short term of this project and the great mass of material to be included the author was not able to contact many groups and interested citizens who will be indispensable to the ultimate success of recreation development of the State lands. Some returns to the questionnaire sent to other states are also outstanding, but provision may be made to include these in the report as they are received by the State Lands Department.

The author has attempted to isolate several problem areas and to develop the advantages and disadvantages of several possible means by which recreational development might be fostered on the State lands. Statutory material and specific items of importance to each topic are included at the conclusion of each chapter. A summary of the responses to the questionnaire sent to other States and summaries of the author's interviews during the past summer are included in the General Appendix.



## Chapter I

### Summary of Land Board Minutes Pertaining to Recreational Use of State Land

In 1927 the Montana State legislature broadened the authority of the Land Board to recognize other public values afforded by state land besides simply the interest in the products of the land. The legislature, in defining the powers and duties of the Land Board, said, in part, "... the guiding role and principle shall be that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well being of the people of the state..." A study of the Land Board's recreation policies from the post World War II years to the present time shows the means by which public recreation on state lands has been balanced with the requirement that the State receive compensation to the trust. Not only the powers of the Board, but also the discretion which it has exercised throughout the years in matters of recreational use, are important considerations before more intensive multiple use management pursuant to 81-103 R.C.M. (1947) as amended in 1969 becomes the effective policy of the Land Board (Appendix, 1).

The Land Board has exercised various means to utilize the State lands for recreational purposes. The most common methods have been to grant easements for recreational use and to set aside lands under the authority of 62-312 R.C.M. (1947). The manner in which such powers have been exercised, however, is often quite confusing. Until the Land Board sets forth consistent procedures to provide for the recreational develop-

ment of State Trust Lands, this confusion will continue to dominate Land Board actions on this regard.

I. Grant of easements for recreation purposes

The Land Board is empowered by statute, 81-802 R.C.M. (1947), to grant easements on state lands for public parks (Appendix, 1). This authority has been occasionally exercised and it is noteworthy that easements for such use have been granted not only to public agencies but also to private groups.

One of the earliest examples of easements for recreational use occurred in 1947 when the City of Billings requested a grant of land for park and recreational purposes. Although a special meeting, 1/14/47, was held on this matter, the Board determined that it had no jurisdiction in the sale of this property. The matter was settled in accordance with chapter 196, Session Laws of Montana 1947, approved 3/5/47, which gave the Land Board special authority to sell the land. An appraisal was ordered and on November 3, 1949 the Land Board accepted the City of Billings offer of \$6000 for this tract of land for conveyance to the City for school or recreational purposes. The transaction as completed, took the form of a permanent easement for which payment was to be made in yearly installments (Appendix, 2). The City of Great Falls also obtained such an easement - June 15, 1964 (Appendix, 3).

Easements and right of way permits have also been granted to private clubs so long as it was apparent that the grant of such privileges would not shut off the general public from entry on the land for fishing or hunting. The Board expressly required the Laurel Rod and Gun Club to set forth the planned use of their request for 60.3 acres of shoreline along the Yellowstone River, and 20.2 acres of Ada Island in the same section. The Club asserted, 12/29/52, that one purpose of the request was to provide a suitable picnic and recreation area for the general public (Appendix, 4). The Land Board then determined that the Club should make arrangements with Fish and Game and that the Board would act accordingly.

Having approved a right of way for a Recreational site and lake to the Richland County Sportsman Club of Sidney, 3/28/52, however, the Board refused a subsequent request by the Club for a reduction in price for the purpose of immediate fencing and improvement of the site. The right of way was granted over 80 acres for \$400.

A tract of land containing 24.7 acres in Jefferson County (Section 36; T9N-R4W) was withdrawn from leasing on January 8, 1969 to be made available to the Fish and Game Department for public recreation area. The Commissioner recommended that the land involved be withdrawn from leasing to become available to Fish and Game under a right of way easement to be conveyed upon payment of fair market value (Appendix 5,6). The Land Board approved this recommendation.

An easement was sold to the Fish and Game Department, 10/18/71, on 170 acres to develop a state monument - the Ulm Pishkun site. This was a permanent easement granted at \$30 per acre, \$5100. The acreage was appraised and sold to Fish and Game at fair market value with the consent of the lessee for the deletion of land from his lease (Appendix, 7).

II. Land Board powers under 62-312 R.C.M. (1947) to set aside lands for public camping and recreational use.

62-312 State parks and recreational and camping grounds.

The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation or demise, to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provision of this act shall be given an appropriate name by the state board of land commissioners.

This statute clearly authorizes the Land Board to accept title to land suitable for public recreational use. This power was exercised, March 14, 1956, to accept the gift of 67.3 acres of land on the West Shore of Flathead Lake for State Park purposes. The Board also accepted a quit-claim deed to one acre of land in Ravalli County including the remains of Fort Owen for use as a public park and historical site - 10/10/56. On January 10, 1968, jurisdiction over Lone Pine State Park, which had been given to the State for the purposes of "developing, maintaining and protecting Lone Pine for recreational purposes", was transferred to the Fish and Game Department.

There is some conflict, however, concerning the power of the Land Board as stated in 62-312 "to set aside any suitable tract or tracts of land for such purposes". (Emphasis added) Strictly construed, this sentence might be read only as applying to lands which are delineated in the first sentence of 62-312. Attorney General Olsen followed this construction when a request was made by the State Park Director to set aside and place under the administration of the Parks Division several parcels of State land already being used as State Parks.

Flathead Lake State Park, Big Arm, was created when the Goodfellowship Club of Lake County, at the suggestion of the State Park Commission, sponsored the development of a tract of state land into a park site. The Club donated the labor and materials for park construction with some assistance from the Park Commission at no cost to the state. The Parks Commission requested, 10/28/53 that Flathead Lake State Park as well as Lone Pine State Park and Bridger Canyon State Park be set aside under the authority of Sec. 62-312 R.C.M. (1947). The Attorney General, however, stated that "this was a matter for legislative action, as no school land can be taken away without either an exchange for land of equal value or deposit in the School Fund of an amount equal to the value of the land involved" (Appendix, 8,9). The matter was finally resolved on April 13, 1955 when the Commissioner was instructed to arrange a proper lease to bring in satisfactory revenue regarding Flathead Lake State Park. However, Land Board records list the parcel as set aside

for park use. The requests concerning Long Pine (supra) and Bridger Canyon State Parks were also denied because no money has been offered, and the State must get full market value. As discussed above, however, Lone Pine was also eventually set aside.

A request to set aside land was also granted on another section of state land on Flathead Lake to the State Park Commission. In the next grazing lease granted to the present lessee the Board voted to insert a clause reserving for public use a strip of land 200 feet back from the shoreline of the Lake (Appendix, 10). A right of way was granted on all lands entering and bordering the area and the reserved lands were placed under the jurisdiction of the State Park Commission.

In three fairly recent instances the Land Board has reversed its earlier position on some of these requests by reason of the authority vested in the Board under 62-312. The Department of Fish and Game requested the Land Board to set aside Elmo and Flathead Lake State Parks for twenty-five years in order to obtain Federal financing for recreation areas. The Board approved the request and turned over management of the land to Fish and Game, citing 62-312 as authority for such a decision (Appendix 11,12).

Dailey Lake Fishing Access site in Park County also was set aside in 1970 under authority of 62-312 R.C.M. (1947). The Department of Fish and Game had held a standard grazing lease for 122.7 acres since 1931. However, in order to make needed improvements with federal assistance from the Bureau of Outdoor Recreation, control had to be a minimum of twenty-five years.

Thus, depending on one's interpretation of the statute, the Land Board might be afforded rather broad powers to exercise its discretion to utilize state land for public camping and recreational purposes. If the statute is read as giving the Land Board power to set aside any suitable tract of State land, the position of the Land Board to provide for recreational use will be strengthened and clarified. This type of use is consistent with the intent of 81-103 R.C.M. (1969) and 62-312 may provide an avenue by which the Land Board might make provision for the future recreational needs of the State of Montana.

III. Other means by which the Land Board has established recreation sites.

The Land Board accepted a bargain and sale deed, Lewis and Clark County to the State of Montana, for a 17.23 acre tract of land to be set aside for state park purposes and to be called Hooper State Park (Appendix, 13). It appears that the consideration in this transaction was based on the County's desire to have the park managed by the State Parks Department. The deed was accepted February 9, 1955.

This type of maneuvering was also apparent at the April 14, 1948 Land Board meeting. Jefferson County quieted title, then deeded to the State a section of County land in exchange for State land. The County then deeded the section just received back to the State for the purpose of the Lewis and Clark Park. Having accomplished this purpose, the State then deeded back the initial section of County land, (See Appendix, 14). The difficulty imposed by the need to convey and reconvey deeds serves as an example of the need for the State to adopt consistent, identifiable recreation use policies.

A ten acre plot of school land bordering the Smith River was dedicated to the public for the purpose of state park when it was discovered that the lessee was conducting a private fishing club on land adjacent to the State land, and in so doing, denying access to the general public (Appendix, 15, 16). At the request of the Montana Wildlife Federation and numerous other sportsmen's groups it was determined by the Land Board that the Park as well as an access road across the state section should be designated. The opening of this road was to have been the responsibility of the interested groups involved.

#### IV. Actions concerning historic or archeological activities.

Previous to the deletion of Sections 72-1201 - 75-1208 R.C.M. (1947) from the Montana Code by the last legislature, the Land Board was given the authority to designate historical sites on state land. This power was exercised to declare Citadel Rock on the Missouri River a historic structure to be set aside as a state monument, 6/14/67. It was determined that this designation would not interfere with the lessee's use of the land for grazing purposes, but he was ordered not to make any structures or excavations on the land without first obtaining the consent of the Land Board (Appendix, 17,18).

In the recodification of Montana's school laws in 1971, however, those sections relating to historic sites were repealed and not reenacted. As a result, Floyd W. Sharrock, Director of the Statewide Archeological Survey, requested a general permit from the Land Board which would allow for examination of ruins, excavation of sites and the gathering



of antiquities on state lands by the survey (Appendix, 19). This permit was granted July 19, 1971, with the provision "that the examinations and gatherings are undertaken for the benefit of reputable museums, universities or colleges or other recognized scientific or educational institutions, with a view of increasing the knowledge of such objects." (Land Board Minutes; XV, 19)

V. Grant of Free Use permits for Recreational purposes.

Although the policy of granting free use permits was discontinued, 6/7/54, the Land Board has occasionally awarded free use permits for recreational uses. At the time of discontinuance of these permits, a review of those already in existence was required. One of these, the Bear Canyon Recreation Area - a ski course - was recommended by the State Forester to be left in effect. He asserted that because the area was not suitable for winter logging or grazing that other interests were not affected by the location of the ski course. Although the State Forester asserted that the state should be compensated for any development of recreation for profit, he stated that there should be a determination concerning each recreation site as to its value to the State. The Board agreed to the proposal to leave the free use permit in effect at Bear Canyon and further found that any organized recreation for profit on state lands should not be granted a free use permit until the matter has been considered by the Land Board (Appendix, 20).

On August 10, 1960, at the request of the State Parks Division to expand an existing campground, the Board also granted a free use permit. These lots had been assigned by the grazing lessee to the

Washington Water Power Company, the original camp developer, contingent on the subsequent assignment to the State Parks Division. At the request of the State Forester, who said the camp was needed because of increased recreational pressure, the free use permit was granted (Appendix, 21).

VI. Land Board actions concerning the Establishment and Protection of Wildlife Refugees.

The Land Board has taken a continuing interest in matters concerning wildlife refugees on State Land. The usual technique has been to withdraw the lands from certain types of leasing if it is apparent that such leasing would harm the wildlife habitat.

State lands which were being considered for oil and gas development in and surrounding the Federal Red Rocks Lake Refuge for Trumpeter Swan were withdrawn from this type of leasing, 4/19/48, at the request of Fish and Game (Appendix, 22,23). Because a note to this effect was attached to all the section cards affected, a later request for a prospecting lease, 9/19/57, was also denied.

The history of the Sun River Elk Range is somewhat more ambiguous. In 1949 a request by the Fish and Game Department to keep the land concerned withdrawn from oil and gas leasing was turned down - Minutes, X, 351. The matter was re-opened, however, at the Land Board meeting, February 27, 1956. At that time members of the Fish and Game Commission emphasized the adverse impact of human intrusion into the elk winter range. The Gulf Oil Company suggested that a compromise might be effected

whereby the oil and gas industry would stay out of the Game Reserve from November 1 to May 1. The 3410 state acres were removed from oil and gas lease sale, however, on March 14, 1956 following numerous protests from sportsmen's clubs and wildlife organizations (Appendix,24).

VII. Land Board policies concerning Exchange of lands for Recreational Use.

The Enabling Act prescribes some limitations on the exchange of state owned lands.

"Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, non-mineral unreserved public lands of the United States within the state." (Appendix 25,26)

Montana State law further sets forth rules governing the "Exchange of lands with United States and counties" - 81-304, the "Exchange of lands with State Water Conservation Board" - 81-305 and the "Exchange of lands with United States for military purposes" 81-306. Finally, 81-2201 - 81-2206 R.C.M. (1947) provide for the exchange of timbered, cut over or burned over lands by the State Forester. The standard for exchange always requires that land of equal value be acquired by the Land Board.

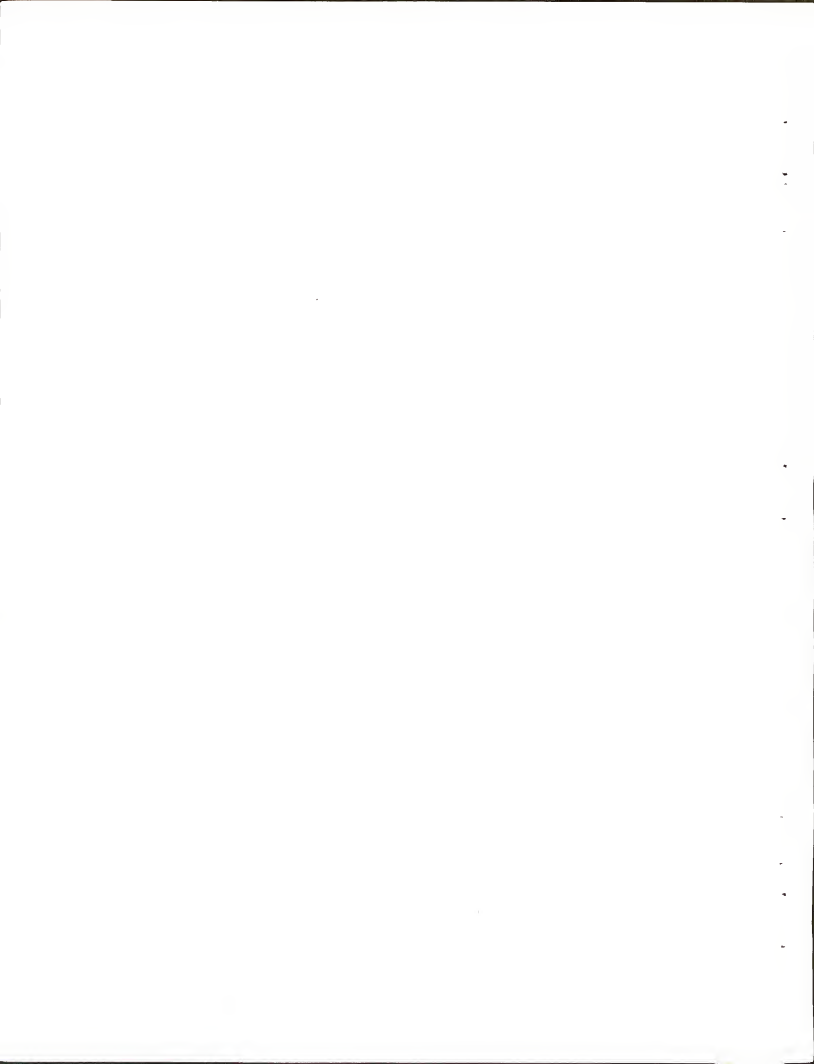
Legislation was passed previous to the March 25, 1965 Land Board meeting to enable the State to exchange land to obtain title to a Buffalo Jump (Section 34; T1N-R2E). The law applied strictly to the section concerned, although the Attorney General has suggested legislation which would not have been limited, (Appendix, 27). The Land Board, pursuant to this legislation,

instructed the Commissioner to take the necessary steps to carry out the exchange to preserve this historic site for the public benefit.

A request was also received from the Bureau of Land Management to exchange 4691.85 state-owned acres in the Pryor Mountains for 3677.23 acres of Federal land near Pompey's Pillar, 10/14/70. Studies were made of the exchange and all concluded that it would be mutually advantageous. Fish and Game voiced opposition, primarily from fear that hunting access would be denied on federal lands acquired by the state. Recreational easement was suggested to alleviate these difficulties. It was believed that such an exchange would fulfill the intent of the multiple use concept set forth in 81-103 because hunter access to a good wildlife area near a major population center would be assured and BLM would acquire land suitable for their purposes of wildlife management and recreation in a remote area (Appendix, 28). Some difficulties, however, arose in the proposed exchange of mineral rights contrary to the terms of the Enabling Act. Thus, the exchange seems not to have been completed.

Thus, the Land Board has embarked on many differing courses of establish recreation sites on state lands. Some of these actions might be of questionable legal or constitutional validity. What is important, however, is the fact that an abiding influence to provide for the public benefit through recreation is present throughout Land Board activities since World War II.

APPENDIX TO CHAPTER I



construction of projects for the control of floods, river regulation, conservation of water, irrigation and reclamation works or transmission or distribution of electric energy, shall, upon application to the state board of land commissioners, be sold and conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof; subject, however, to the approval of the state board of land commissioners, and the price limitations of the Enabling Act and the state constitution.

(2) There is hereby granted to the United States over all the lands now owned or hereafter acquired by the state of Montana, an easement of sufficient width for the purpose desired for right of way for ditches, canals, tunnels, telephone, telegraph and electric power lines now constructed or to be constructed by the United States government in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water and transmission and distribution of electric energy.

(3) All conveyances of state lands shall contain a reservation of such rights of way easements. It is further provided that whenever said lands herein granted as rights of way shall cease to be used for such purpose, the same shall revert to the state of Montana, upon notice to that effect being given to the proper authorities.

(4) The mineral reservations now applying to sale of lands received through grants from the United States shall apply to all lands sold to the United States under this act, but all prospecting and exploration for minerals therein, the mining and removal thereof and all operations carried on in connection therewith, must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

(5) Lands needed by the United States for any of the aforesaid purposes may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

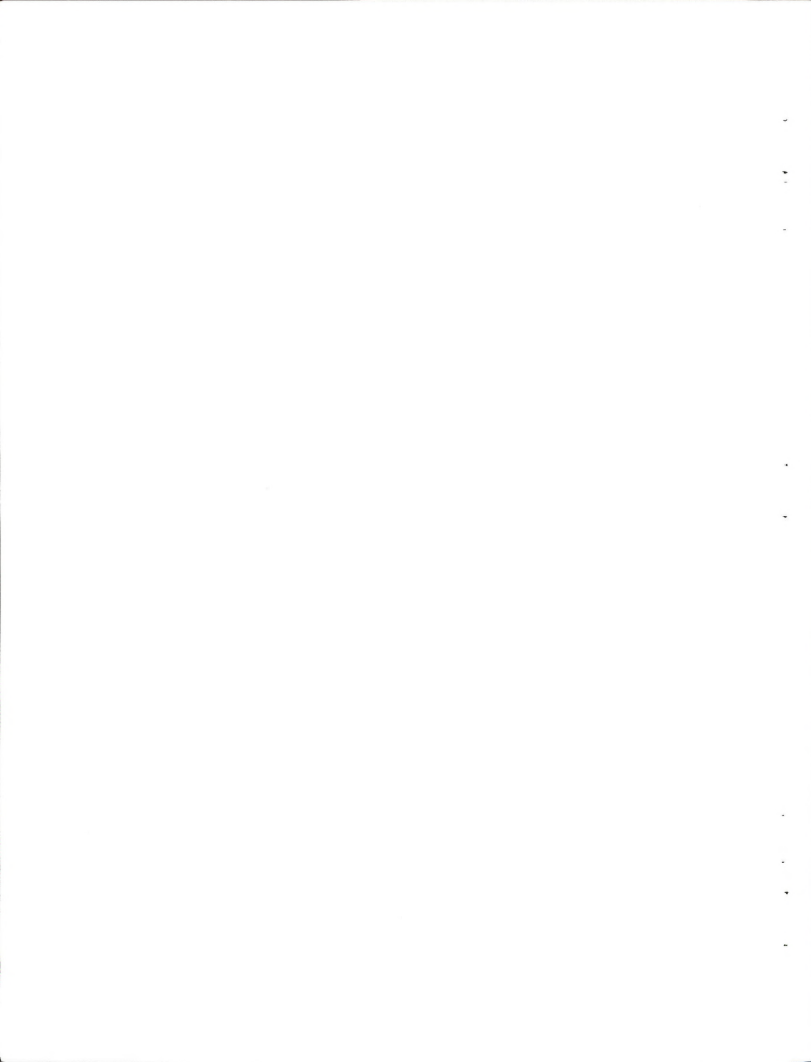
(6) The provisions of this act governing the sale of state lands to the United States shall also apply to the sale of state lands for projects financed by the United States under the administration of the state water conservation board, except as to appraisal by the United States.

History: En. Sec. 58, Ch. 60, L. 1927;  
amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L.  
1933; amd. Sec. 1, Ch. 80, L. 1945.

Collateral References  
Public Lands—158½.  
73 C.J.S. Public Lands § 235 et seq.

81-802. (1805.57) Easements for school sites and grounds and other public uses. The state board of land commissioners is hereby authorized and empowered to grant easements in state lands for schoolhouse sites and grounds, for public parks, community buildings, cemeteries and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of such properties.

History: En. Sec. 57, Ch. 60, L. 1927;  
amd. Sec. 6, Ch. 257, L. 1965.





SPECIAL MEETING OF THE STATE BOARD OF LAND COMMISSIONERS CALLED  
SATURDAY, NOVEMBER 5, 1949 at 9 o'clock A.M. in the  
Governor's Reception Room.

Present: Governor John W. Bonner; Superintendent of Public Instruction, Mary Condon,  
Secretary of State, Sam W. Mitchell; Absent, Attorney General Arnold Olsen.

BUSINESS CONSIDERED AS FOLLOWS:

1 CONTRACT FOR LEGAL SERVICES OF P.J. GILLFEATHER  
IN THE TEXAS PACIFIC CASE

This contract (See item 1, Misc. Papers No. 784) was approved by individual Board members and confirmation of their action was unanimous at this meeting.

2 SCHOOL DISTRICT NO. 2 YELLOWSTONE COUNTY APPLICATION  
FOR EASEMENT ON "PRAISON SITE" FOR SCHOOL AND RECREATIONAL  
PARK PURPOSES

The following letter from the Mayor of the City of Billings was presented to the Board for consideration:

"The City Council in an informal meeting authorized me to make arrangements to obtain from the State Land Board title to the South Half of the Southeast Quarter of Section Five, Township One South, Range Twenty-six East, NPM, Yellowstone County, Montana on the same terms and conditions as outlined in your letter of September 26th to School District No. 2 of Yellowstone County.

I am, therefore, authorized to offer on behalf of the City of Billings the sum of six thousand dollars (\$6,000.00) for this tract of land for conveyance to the City with the restriction that the land is to be used only for school or recreational purposes or both and subject to the obligation to provide for the removal or compensation for present improvements on the land, and settling of the claim for platting this 20-acre plant (between \$400 and \$500).

I assume that it would be understood that if in the future the School District No. 2 needed some portion of this land, they would compensate the city for the portion needed by the School District on the same basis as the investment of the City in the land. In other words, the City would not make a profit from the School District.

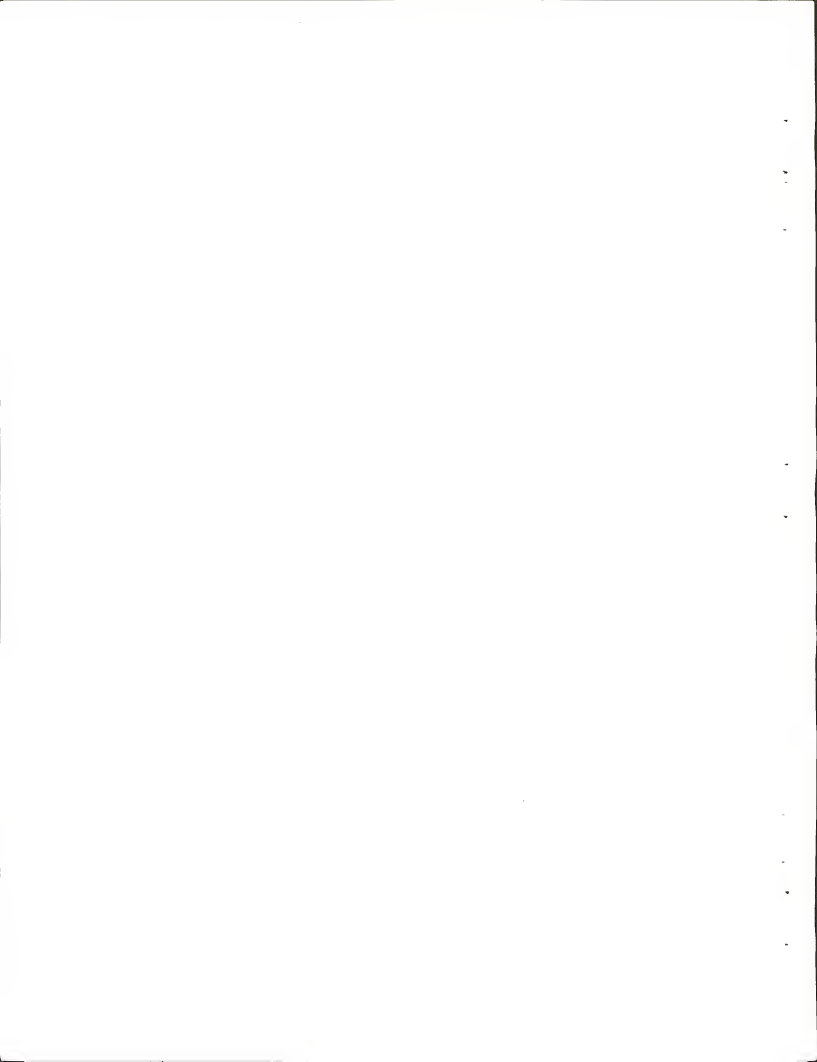
The City expects to raise this money from the park levy and does not have the funds at the present time, but will provide such funds next year from the levy for 1950. In the meantime, the City could arrange to pay \$150 on its payment or make whatever arrangements are necessary and required by the Board.

In view of the fact that Mr. Fraser is familiar with this matter, we have requested that he be present at the Board meeting, and he is authorized to make commitments for the City in accordance with this letter.

The City of Billings desires to acquire this tract so that it may be developed into a park area or used for school purposes. The City Council feels that it would be a great advantage to the City in the future and appreciates the consideration of the Land Board in cooperating in this matter. If there are any details that have to be worked out, you can be assured the City will do whatever is necessary in order to complete the transaction.

Yours very truly,  
/s/ T.H. Rowe

Mr. Mitchell moved that an easement be granted School District No. 2 Yellowstone County;  
Miss Condon seconded the motion and it carried unanimously.



June 15, 1964

#### 4. REQUEST OF CITY OF GREAT FALLS AND THE GREAT FALLS KIWANIS CLUB TO OBTAIN THE USE OF A TRACT OF LAND OWNED BY THE STATE SCHOOL FOR DEAF AND BLIND FOR USE AS A PUBLIC PARK

The following letter, dated May 29th, was received by Commissioner from Fred L. Hill, Secretary Great Falls Park Board:

"The Park Board of the City of Great Falls and the Kiwanis Club of Great Falls have discussed the development of a park on land west of the State School for the Deaf and Blind. This land is vacant and the administration of the State School for the Deaf and Blind has stated they can ferresee no need for the land for many years in the future. The Kiwanis Club is willing to improve the site and the Park Board has agreed to maintain it. This would be of benefit to the neighborhood as well as the State School as a recreation area. Between the State School and the proposed park area is 38th Street. This street was vacated in 1943. However, it has been in use as a street ever since. In fact, it is a vital link in the traffic pattern of eastern Great Falls. The City would like to continue to use this street. The administration of the State School also feels it should be used as a street, until or unless new facilities are built for the school on the proposed park site. At present there are no plans for such expansion. The City of Great Falls would like to be given a lease for as long as possible for the park site for park purposes and for the area known as 38th Street for street purposes. It is felt that this would be beneficial for all concerned. Would you please give this matter your consideration. Any aid given to the City in this regard will be greatly appreciated."

The following Agreement and Grant of Easement was drafted by the Attorney General's office

#### AGREEMENT AND GRANT OF EASEMENT (Montana School for the Deaf and Blind)

THIS AGREEMENT AND GRANT OF EASEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1964, by and between the STATE OF MONTANA, acting by and through its STATE BOARD OF LAND COMMISSIONERS with the approval of its STATE BOARD OF EDUCATION, hereinafter referred to as the State; and the CITY OF GREAT FALLS, a municipal corporation of the State of Montana, hereinafter referred to as the City,

#### WITNESSETH:

THAT WHEREAS, the State owns certain real property within the City of Great Falls, Montana, the same being held for and devoted to use of the State School for the Deaf and Blind, and,

WHEREAS, currently and for the foreseeable future a portion of said lands are not required for the exclusive use of said school, and,

WHEREAS, there exists and will exist a demand in the area in which said school is situated for a public park and playground to serve the inhabitants of the area, and,

WHEREAS, a park and playground on said portion of state lands would likewise be beneficial to the students of the said school,

NOW, THEREFORE, for and in consideration of the mutual covenants hereafter set out, the parties hereto agree as follows:

1. The State Grants to the City an easement for public park purposes as contemplated by Section 81-602, R.C.M., 1947, over and to the following described lands:  
Lots Twelve (12), Thirteen (13), and Fourteen (14) of Block Thirty-six (36), and all of Block Thirty-seven (37) of the Boston and Great Falls Addition to the City of Great Falls, Cascade County, Montana.
2. The State grants to the City an easement for street purposes over and across that certain portion of the said school site formerly occupied by 38th Street in said City of Great Falls and heretofore vacated in 1943.
3. The City shall install or cause to be installed and maintained playground and other recreational facilities on the denized premises of design and type approved by the Superintendent of said school as presenting no undue hazard to blind or deaf children.
4. The City shall grade and provide bituminous surface treatment to the said street contemplated by paragraph 2 above and shall maintain the same, and shall enforce the school speed limit for traffic on said street.
5. Either party hereto may terminate this agreement and relinquish the rights granted hereunder by giving notice at least \_\_\_\_\_ days before the effective date of such termination to the other party. Upon termination, the City shall have the right to remove any or all equipment or apparatus by them installed and shall restore the arclthus effected to a safe and level condition. Any equipment or apparatus remaining the premises from and after thirty (30) days subsequent to the effective date of such termination shall become the property of the State.
6. The City shall bear the costs of any and all sidewalks or street improvements upon or abutting the denized premises.

IN WITNESS WHEREOF, the parties hereto have, by and through their duly authorized officers, executed these presents.

FOR THE STATE OF MONTANA

/s/ Tim Babcock

/s/ Forrest H. Anderson

/s/ Frank Murray

Accepted: \_\_\_\_\_  
Commissioner of Lands and Investments

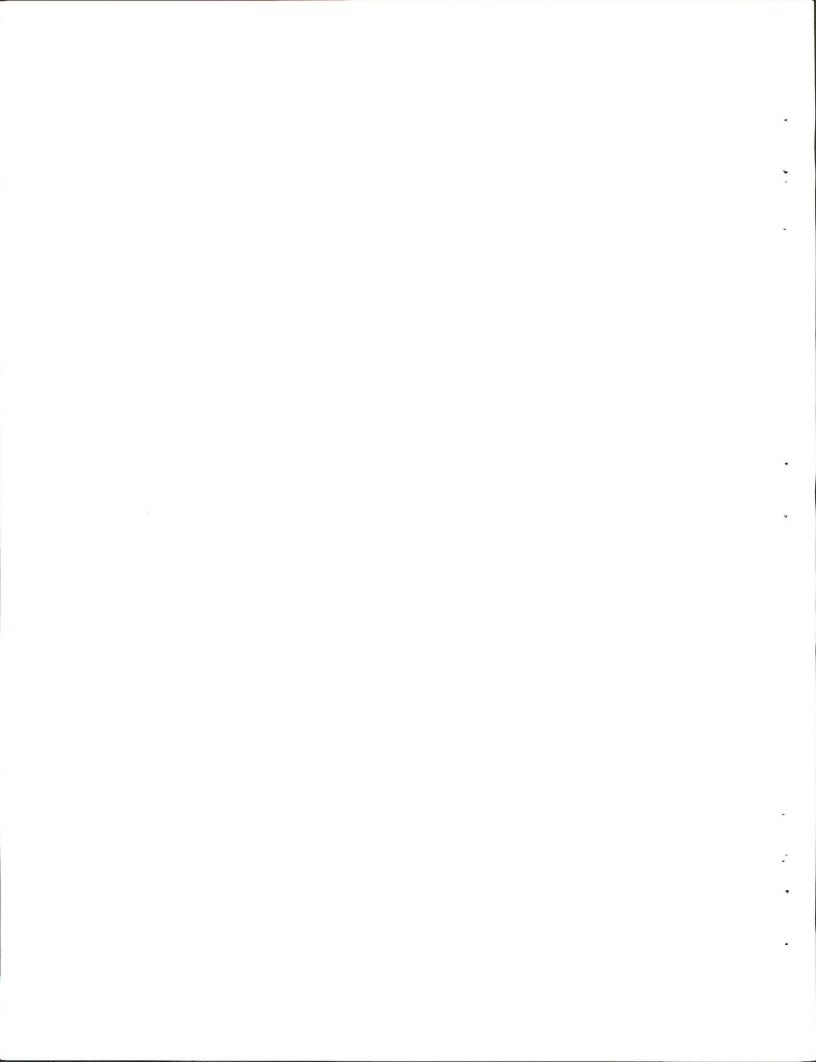
STATE BOARD OF LAND COMMISSIONERS

FOR THE CITY OF GREAT FALLS

Accepted: \_\_\_\_\_  
City Clerk

Mayor

Mr. Anderson moved grant of easement for tract of land owned by State School for Deaf and Blind for use as a public park be approved subject to the approval of the State Board of Education. Seconded Mr. Murray. Unanimous.



M. Dolven PRESIDENT Max E. Long

VICE PRESIDENT Roy A. McCracken SEC. Y. TREAS.

# Laurel Rod and Gun Club

Promoting Good Hunting and Fishing for Good Sportsmen

LAUREL, MONTANA.

December 20, 1952

State of Montana  
Department of State Lands & Investments  
Helena, Montana

Dear Mr. Pilgeram:

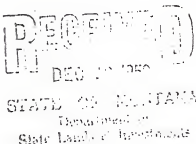
In reply to your letter of December 16, 1952, regarding our request for an easement on Sec. 36&2S-23E.

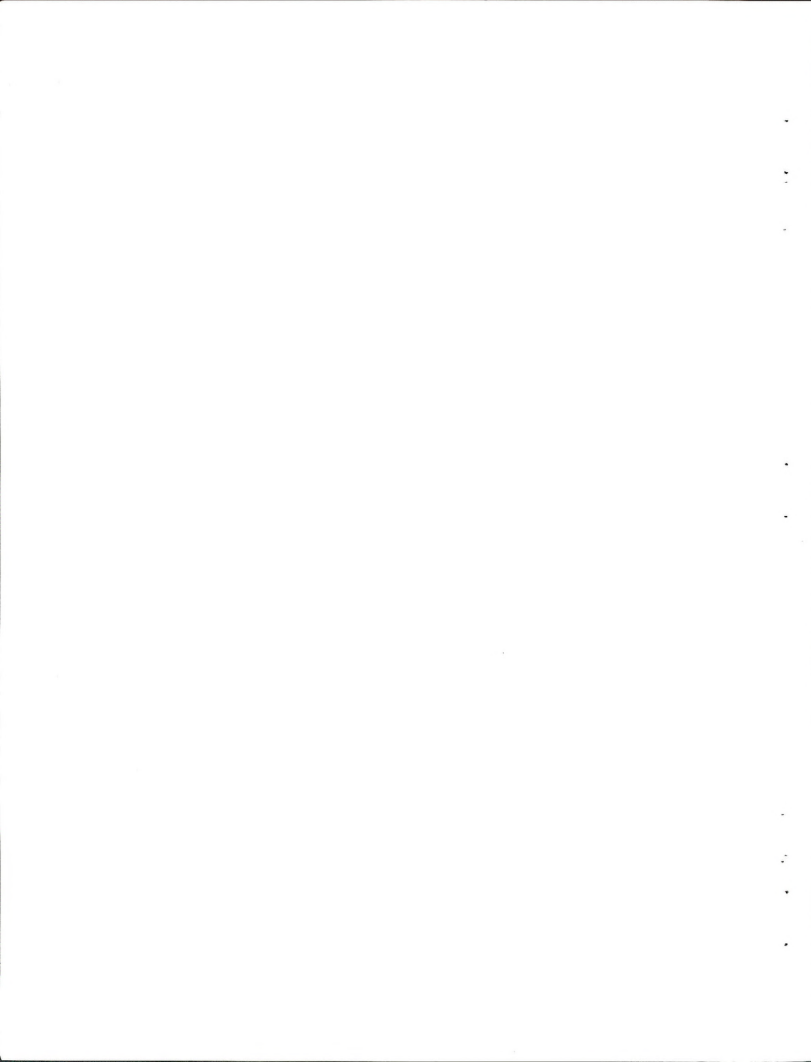
Our purpose of this request is to obtain land along the Yellowstone river that can be made into a suitable picnic and recreation area for the general public. We have in mind for the future of making improvements such as tables, fire places, duck blinds, and other facilities that may be of use to the public. We have also considered the possible use of the natural facilities of this land as a rearing pond for game fish to be planted in the Yellowstone river.

Hoping this request meets with your approval, I remain

Respectfully yours,

*Roy A. McCracken*  
Roy A. McCracken  
Sec-Treas.  
Laurel Rod & Gun Club





January 8, 1969

169-1. REQUEST FOR WITHDRAWAL OF PART OF SECTION 36, TWP. 9N., RGE. 4W., JEFFERSON COUNTY, FROM LEASING TO BE MADE AVAILABLE TO THE FISH AND GAME DEPARTMENT FOR RECREATIONAL PURPOSES

Information omitted from item as listed on page 187.

The following letter, dated November 14, 1969, was received from the Fish and Game Department:

"Our agency has investigated a tract of land under your jurisdiction which we believe would be desirable for use as a public recreation area.

The subject tract is located on Lump Gulch in the SW 1/4 of Section 36, Township 9 North, Range 4 West, consisting of an estimated three acres lying south of the county road. This tract is presently being used by the public for picnicking, fishing, and related recreation activities.

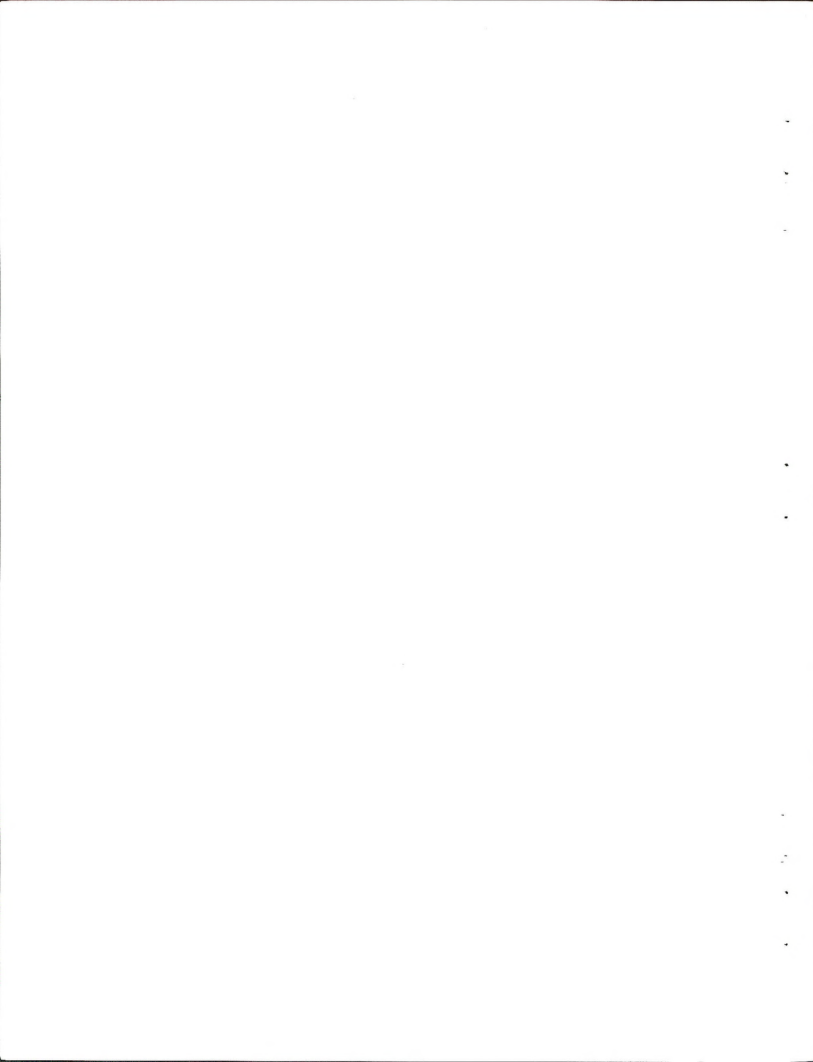
Would you consider transferring this land to our administration, preferably by perpetual easement? Of course, we would expect to pay the appropriate fee, and if a land survey is required, we could probably have this accomplished by our personnel."

Description of land in Lump Gulch

A tract of land in Section 36, Township 9 North, Range 4 West of the Prime Meridian of Montana; which is more particularly described as follows: Beginning at a point in the center of the County Road, which bears S. 89 degrees 43' W and 69.35 feet from the South East corner of said Section 36; Thence N 53 degrees 41' W, 298.62 feet; thence N 57 degrees 37' W, 300.47 feet; thence N 62 degrees 07' W, 584.74 feet; thence S 86 degrees 33' W, 422.20 feet; thence S 72 degrees 31' W, 793.81 feet; thence S 83 degrees 25' W, 334.01 feet; thence S 47 degrees 10.5' W, 38.17 feet, all of the foregoing points being in the centerline of the existing county road; thence, leaving the centerline of the County Road, South along the quarter Section Line, 299.37 feet to the South Quarter Corner of Section 36; thence N 89 degrees 43' E, 2544.25 feet to the point of beginning, containing in all 24.7 acres.

This tract of state land is separated by a fence and county road and is described as brushy creek frontage and steep timbered slopes. Not more than 5 acres of suitable grazing land is contained within this 24.7 acre tract. Traditionally, this site has been used by campers, picnickers and fishermen. The access is excellent and is only 13 miles from Helena on good roads. The taking of this tract will not materially change the forage or grazing value of the remainder of the state land north of the county road.

It is recommended the above described tract of land be withdrawn from leasing at this time to become available for use by the Parks division of the Fish and Game Department under right





169-1. REQUEST FOR WITHDRAWAL OF PART OF SECTION 36, TWP. 39N., RGE. 40W., JEFFERSON COUNTY, FROM LEASING TO BE MADE AVAILABLE TO THE FISH AND GAME DEPARTMENT FOR RECREATIONAL PURPOSES - continued

Information omitted from item as listed on page 187 - continued

of way easement to be conveyed upon payment by them of the fair market value of the tract in question. The remainder of the lease will remain in a grazing classification and be renewed as such.

Meeting unanimously adjourned.

APPROVED:

ATTESTED:

President

Secretary

MINUTES

STATE LAND BOARD

REGULAR MEETING OF STATE BOARD OF LAND COMMISSIONERS

Mad. Payers No. 1992

Tuesday, February 11, 1969, at 2:00 P.M.  
In Governor's reception room.

PRESENT: Governor Forrest H. Anderson; Secretary of State Frank Murray; Superintendent of Public Instruction Dolores Colburg and Commissioner and Ex-officio Secretary Mons L. Tetgen.

ABSENT: Attorney General Robert L. Woodahl.

Mr. Murray moved that the minutes of the January 8 meeting be considered read and approved as read. Seconded Mrs. Colburg. Unanimous.

BUSINESS CONSIDERED:

269-1. REQUEST FOR WAIVER OF GRAZING RENTAL ON SAGEBRUSH CONTROL PROJECT ON STATE GRAZING LAND - Meagher County

The lessee, Miss Gertrude E. Prescott, has requested a waiver of grazing rental on Lease No. 45877 for the years, 1968, 1969 and 1970. This request is based on an intensive management program which includes a sagebrush control project that is being carried on by the lessee at her own expense. Sections 14 and 16 of state land are included in this project. Results of the sagebrush spray project have been examined by Land Department personnel in the field in 1967 and 1968. The high percentage kill of sagebrush has significantly increased the value of the state grazing land by reducing undesirable plant competition and released high producing forage species. It is estimated that a 300% increase in forage production has resulted from this treatment and deferment practice.

An evaluation of this project clearly indicates that grazing land has, and will, upon final completion, result in an increased value of state land through a significant increase in animal unit months of grazing. It is therefore recommended the waiver of grazing rental request be granted, to be applied for 1968 and effective for 1969 and 1970, to obtain the maximum benefits from this project.

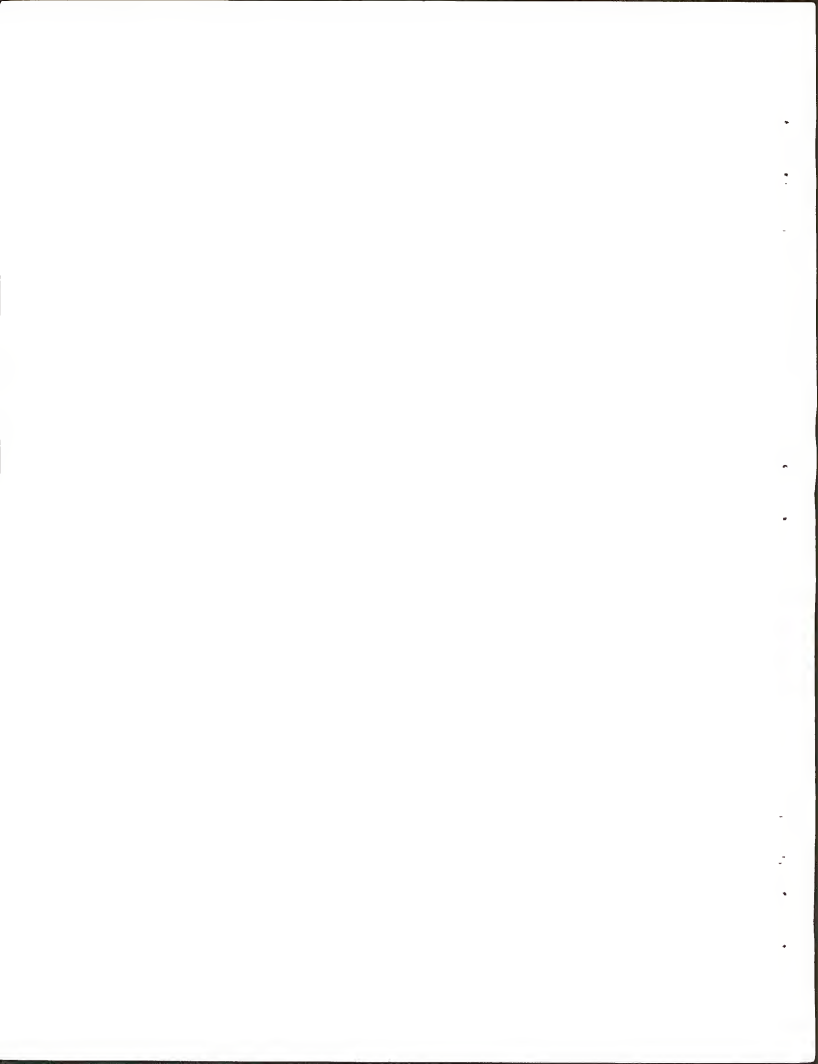
After considerable discussion, it was suggested by the Governor that since the improvement of the land is being done at the expense of the lessee and that in all probability the carrying capacity would be increased and thereby the rental a document or agreement should be prepared by the commissioner with the assistance of the attorney general spelling out the various conditions and absolving the state from responsibility as a result of the lessee's action.

Mrs. Colburg moved the request for waiver be made on this basis. Seconded Mr. Murray. Unanimous.

269-2. APPROVAL OF LAND SALES - Phillips and Daniels Counties

Date of Sale	Purchaser and Address	Description	Acres	Price per Acre	Total	Paid	C.P.D.
1-22-69	Ralph M. & Margaret R. Bergsagel, Box 355, Malta, Montana	Lots 1, 2, NE 1/4, Sec. 7; NW 1/4, Sec. 8; 280-336, including state-owned improvements Phillips County	306.35	\$79.65	\$2450.78	\$24,400.78	10477
1-23-69	Julian C. & Druenell Danielson, Secody, Mont.	All, Sec. 18, Twp. 34N., Rge. 40E. Daniels County	640.00	\$50.00	\$3,200.00	\$3,200.00	Cash

Mr. Murray moved, upon recommendation of Commissioners, board approve sale of Lots 1, 2, NE 1/4, Sec. 7; NW 1/4, Sec. 8; Twp. 34N., Rge. 40E., Phillips County, at \$79.65 per acre to Ralph M. and Margaret R. Bergsagel and All of Section 18, Twp. 34N., Rge. 40E., Daniels County, at \$50.00 per acre to Julian C. and Druenell Danielson. Seconded Mrs. Colburg. Unanimous.



October 18, 1971

1071-20. RESOURCE DEVELOPMENT PROJECT - Powder River County, E. B. Ranch, lessee - continued

Letter from Robert S. Duncan - continued:

The lessee will pay increased rental of \$243 to amortize the construction costs of the well and powerline. This amortization schedule will pay off the state's investment in 9.8 years. If the well is wind powered the lessee will pay increased rental of \$91 to amortize the construction costs of the well alone.

It is my recommendation that Resource Development Funds be invested in this project which will benefit the land through better distribution of livestock."

## Summary:

Resource Development Project-----Powder River County  
 Lessee-----E. B. Ranch (J. L. Wilson, President)  
 Lease # 52679 Expires 1978  
 Project-----constructing a stock water well  
 Estimated Cost:

Drilling and casing well	\$890
Powerline construction	1500
Total	\$2390

## Income:

Present: \$126 or \$5.20 acre  
 Projected: \$369 or \$5.58 acre (including powerline)  
 \$217 or \$3.44 acre (without powerline)

Mr. Woodahl moved resource development project to construct stockwater well, in Section 16, Twp. 6S., Rge. 50E, Powder River County, be approved. Seconded Mr. Murray. Unanimous.

1071-5. ULM PISHKUN SITE - EASEMENT APPLICATION BY FISH AND GAME DEPARTMENT

The Fish and Game Department seeks an easement on 170 acres in Section 18, Twp. 20N., Rge. 2 East to develop a state monument. The 1971 legislature authorized and funded the Ulm Pishkun development, and the Board of Trustees, Montana Historical Society has recommended such action.

Present rentals on the acreage are \$43.35 per year. Appraisal indicates a fair market value of \$30.00 per acre which would return \$255 annually at 5% investment return. The lessee has consented to the deletion of this acreage from his lease.

Commissioner recommends that the Board approve the sale of easement at \$30.00 per acre..... \$5100 for the tract.

The following letter, dated September 9, 1971, was received from Frank Dunkle, State Fish and Game Director:

"As you will recall, the recent legislature directed our agency to develop a state monument at the Ulm Pishkun.

The land we plan to use for this development is owned by the State of Montana. You have advised us that you would recommend that the Land Board grant us a permanent easement on this land if we would submit the appropriate application. It is our understanding that we would be charged for an easement at a rate to be determined by the Land Board.

Accordingly, we enclose two executed right-of-way application forms, embracing a total of 170 acres.

Mr. Earl Munroe, the present lessee of this land, is very much in sympathy with our objectives, and his letter assenting to the cancellation of this lease is enclosed.

We ask that you bring this matter to the attention of the Land Board, requesting their approval of our application. If you will notify us of the amount of the charges for the land, we will make arrangements for payment."

The following letter, dated September 7, 1971, was received from Earl Munroe, lessee, on the above described state land:

"I have been in contact with the Montana Fish and Game Department and have discussed the development of the Ulm Pishkun with them.

They have asked that I relinquish a portion of my state lease so that control of the land could be turned over to the Montana Fish and Game Commission. As you know, I have been interested in the development of this area for several years and am glad to turn this land over to them.

Please consider this letter as my approval to delete 170 acres from my lease. The land to be deleted is described as: ULM PISHKUN, NE 1/4, SEC. 18, TWP. 20N., RGE. 2 East, RMP in Cascade County, Montana.

Mr. Murray moved on recommendation of Commissioner Board approve sale of easement at \$30.00 per acre compensation, for a total of \$5100 for the tract. Seconded Mrs. Colburg. Unanimous.



October 28, 1953

If we are to accept the abstracts presented by the Gulf Oil Corporation on Lots 1, 2 and 3, East half of the East half (E1/4) and West half of the East half (W1/2) of said Section 31 (435.39 acres), the State of Montana has no right, title or interest in the mineral rights therein. The remaining 198.41 acres in said section (East half of the East half (E1/4) and Lot 4 therein) will be considered separately.

/s/ Arnold H. Olsen  
Attorney General

Attorney John B. Beaume of Billings, Montana, representing the Gulf Oil Corporation appeared before the Board relative to the matters set forth in the above two letters, and the refund of \$5292.66.

Mr. Olsen moved that the Commissioner of State Lands & Investments be authorized and directed to refund to the Gulf Oil Corporation, the lease bonus and rental paid on 435.39 acres (Lots 1, 2, 3, E1/4 and W1/2 of Section 31, Twp. 22N., Rge. 50E) for the reason that the State does not have title to the mineral rights in said land. Miss Condon seconded the motion and it carried unanimously.

Mr. Olsen then moved that non-drilling penalty for this year be waived on said lease. Miss Condon seconded the motion and it carried unanimously.

Mr. Olsen further moved that the acreage in the lease be reduced in accordance with his letter, to cover 198.41 acres in said section, being the E1/4 and Lot 4 of Section 31, Twp. 22N., Rge. 50E. Miss Condon seconded this motion and it carried unanimously.

21

#### INVESTMENT OF FUNDS - INDUSTRIAL ACCIDENT BOARD

Under date of October 28, the Industrial Accident Board presented the following letter re. investment of available funds:

The United States Government is offering a short term registered bond which will be issued under date of November 9, 1953 and will become due September 16, 1961. This bond bears an interest rate of 2-3/4% per annum.

The issue is to be offered for one day only, that is October 29, 1953. Mr. Kiely has conferred with you over the telephone in connection with this, and I understand, has your oral consent.

The Industrial Accident Board would like to invest the sum of \$370,000.00 in this issue and we, therefore, request that you consent to this arrangement being given under the usual conditions as provided by the new Investment Act. These bonds will be held in trust for the Industrial Accident Reserve Fund.

Mr. Olsen moved we confirm the Commissioner's action in purchasing investments as set forth. Miss Condon seconded the motion and it carried unanimously.

22

#### MATTER OF STATE PARKS

Ashley C. Roberts, State Park Director, appeared before the Board and presented the following letter:

The Park Division of the State Highway Commission respectfully requests that the lands described on the attached sheets be "set aside" by the State Land Board for State Park purposes and placed under the administration of the Park Division of the State Highway Commission.

As our authority for this action, we quote as follows from Section 62-312 of the Revised Codes of Montana, 1947:

"The State Board of Land Commissioners may acquire and accept title in the name of the State of Montana by grant, dedication, gift, devise, donation or devise, to land suitable for public camping and public recreational use. The State Board of Land Commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this act shall be given an appropriate name by the State Land Commissioners."

It is realized that these lands have in the past and are currently being used as state parks, however, to make certain that we are in strict compliance with the act creating the park division of the State Highway Commission, we should like to have the minutes of the Land Commission show that this action has been taken.

It is our understanding that these are all state lands and the Land Commission has the titles to this property.

Thanking you for your cooperation in this matter.

Yours very truly,  
STATE PARK DIVISION  
/s/ Ashley C. Roberts  
State Park Director.



October 29, 1953

LOON PINE STATE PARK

Commencing at a point known to be the South Quarter Section Corner for Section 24, Township 28 N., Range 22 E. of the Northern Principal Meridian; thence North, a distance of 2677.0 feet; thence East 691.6 feet to the true point of beginning of the tract of land herein described. Thence from said true point of beginning, running on the following bearings and distances: North 82 degrees and 41 minutes East, 168.0 feet; thence South 54 degrees and 10 minutes East, 256.0 feet; thence East 267.0 feet to the north and south sub-division line of the East Half of the above said Section 24; thence North on said sub-division line 2715.4 feet to the north boundary line of said Section 24; thence West on said north boundary line 2211.2 feet to the northwest corner of the East Half of the Northwest Quarter of said section; thence South on the West boundary line of said East Half to a point situated 320.0 feet north of the Southwest corner of said East Half; thence South 82 degrees and 40 minutes East, 1940.5 feet more or less to the point of beginning. All of the above described tract being in and a part of the East Half of the Northwest Quarter (S1/2) and the West Half of the Northeast Quarter (N1/2) of said Section Twenty-four (24) in said Township and Range above described, containing 159 acres more or less.

ALSO, the following described tract of land situated in said Section 24 above described, to-wit: Beginning at a point situated 458.9 feet West of the Northeast corner of Section 24, Township 28 North, Range 22 West of the Northern Principal Meridian; thence running on the following bearings and distances: South 66 degrees 01 minutes West, 147.3 feet; thence South 14 degrees 48 minutes West, 130.5; thence South 24 degrees 18 minutes West, 348.3 feet; thence South 01 degree and 47 minutes West, 30.0 feet to the true point of beginning of the tract of land herein described; thence South 01 degree and 47 minutes West, 168.0 feet; thence South 85 degrees and 30 minutes West, 1000.0 feet; thence North 13 degrees and 00 minutes East, 434.0 feet to an intersection with the South boundary line of the County Highway dedicated to Flathead County by Deed dated December 5th, 1940, recorded in Book 240 at page 538 of the records of Flathead County, Montana; thence South 61 degrees and 20 minutes East along the south boundary line of said county highway, 565.0 feet more or less to the point of beginning, containing 3 acres, more or less.

FLATHEAD LAKE STATE PARK

All of lots 5, 6, 7, in Section 29, Township 24N., Range 21 West, containing 66.68 acres more or less.

BRIDGER CANYON STATE PARK

North Half of the Southwest Quarter (N1/2S1/2); the Northeast Quarter of the Southeast Quarter (N1/2SE1/4); the West Half of the Southwest Quarter of the Northwest Quarter (W1/2SW1/4); and the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE1/4SW1/4) in Section nineteen (19) Township One North, Range Seven East (T1N. 7E) and containing approximately one hundred fifty acres, more or less.

After giving due consideration to this matter of parks, the Attorney General stated this is a matter for legislative action, as no school land can be taken away without either an exchange for land of equal value or deposit in the School Fund of an amount equal to the value of the land involved.

23

REQUEST FOR CORRECTIVE PATENT

Arthur Daniel Miles, Livingston, Montana, has requested the cancellation or Patent No. C-2639 and issuance of a new patent to "Arthur Daniel Miles and Lucille Miles, husband and wife, as joint tenants with right of survivorship and *et ux* as tenants in common", and has deposited \$5.00 as fee for new patent.

Patent to this land was issued to "Arthur Daniel Miles or Lucille Miles" at the request of the purchaser, on February 2, 1944.

Miss Gordon moved we comply with the request for a corrective patent. Mr. Olsen approved the action and it carried unanimously.

On motion by Mr. Olsen seconded by Miss Gordon, the secretary of the Board was instructed to write our short answer and express our best wishes for his speedy recovery.

ADMINISTRATIVE

Approved:

Attests:

*Arthur Daniel Miles*  
Secretary  
*Miss Gordon*  
Secretary





MEMBERS OF  
STATE PARK COMMISSION

BASIL BROOKE, CHAIRMAN, WHITEHALL

FRANCIS C. CROSS, BILLINGS

JACK N. VICKERY, MAYNE



State of Montana

STATE PARK COMMISSION

December 31, 1951

W. R. RANKIN  
STATE PARK DIRECTOR  
BOX 308, BOZEMAN  
RUTLEDGE PARKER  
SECRETARY AND STATE FORESTER  
FORESTRY SCHOOL BUILDING  
MONTANA STATE UNIVERSITY  
MISSOULA

RECEIVED  
JAN 2 1952

STATE OF MONTANA  
Department of  
State Lands and Forestry

State Board of Land Commissioners  
State Capitol  
Helena, Montana

Dear Sirs:

This is to request that a portion of State-owned land on Flathead Lake now under lease be set aside as a State Park when the present grazing lease expires on February 28, 1952.

In accordance with our conversation with Mr. Pilgeram, we would like to have inserted in the next grazing lease granted to the lessee, a clause which reserves for public use a strip of land two hundred (200) feet back from the shoreline of Flathead Lake on all of the following lands bordering the lake:

Lots 5, 6, and 7 SW $\frac{1}{2}$  NE $\frac{1}{4}$  and W $\frac{1}{2}$  SE $\frac{1}{4}$ , Sec. 29;

Lot 1, W $\frac{1}{2}$  E $\frac{1}{2}$  Sec. 32,

All in T 24 N R 21 W.

Further, a right of way should be granted on all roads entering and bordering this property to afford the public access to the area. The reserved lands should then be placed under the jurisdiction of the State Park Commission in order to insure that proper planning will precede construction of facilities and provision is made for adequate maintenance.

During the past four years this department has many times been requested by civic groups from Polson, Big Arm, Hot Springs, Somers, Dayton and Kalispell to assist in converting these State lands to the recreation benefit of the public. We have assured these groups that, when the present lease is due to expire, we would take the matter up with the State Board of Land Commissioners. During a recent meeting at Polson, we were assured that, if this proposed park area was obtained, a committee of local people would be set up to raise money and provide labor for the construction of toilets, bench-tables, fire-rings and waste receptacles under the direction of the State Park Commission.

This letter is to submit the proposition to the Board for its consideration. I would be glad to meet with the Board at any time to further discuss the matter or to provide such additional information that might be needed.

Sincerely yours,

STATE PARK COMMISSION

W. R. Rankin  
STATE PARK DIRECTOR



STATE OF MONTANA  
DEPARTMENT OF FISH AND GAME  
Helena, Montana  
March 30, 1966

John L. Teigen, Commissioner  
State Lands and Investments  
State Capitol Building  
Helena, Montana

Dear Mons:

At its March 21st meeting, the Montana Fish and Game Commission discussed problems relating to development of state parks at Flathead Lake.

As you know, the property at Flathead Lake State Park and the new area which we are obtaining at Elmo (formerly leased to Daryl Proud) are under the jurisdiction of the State Land Board. The Board leases these areas to us for ten-year periods under terms of your standard grazing lease.

We have planned a development program for parks in the Flathead area which is to be partially financed by the Bureau of Outdoor Recreation, a federal agency. As you would expect, there are certain standards and requirements to be met if we are to participate in this funding arrangement. One of these requirements is that we obtain ironclad land control for the effective life of the improvements to be installed. This has been interpreted by the B.O.R. as a minimum of twenty-five years. Using this yardstick, they have declined to participate in development of the above areas, on which we have only ten-year leases.

After a discussion of possible solutions to the problem, the Commission resolved to request that the State Land Board set aside these two tracts as state parks, under the terms of Section 62-312, R.C.M. (Quoted herewith for your convenience.)

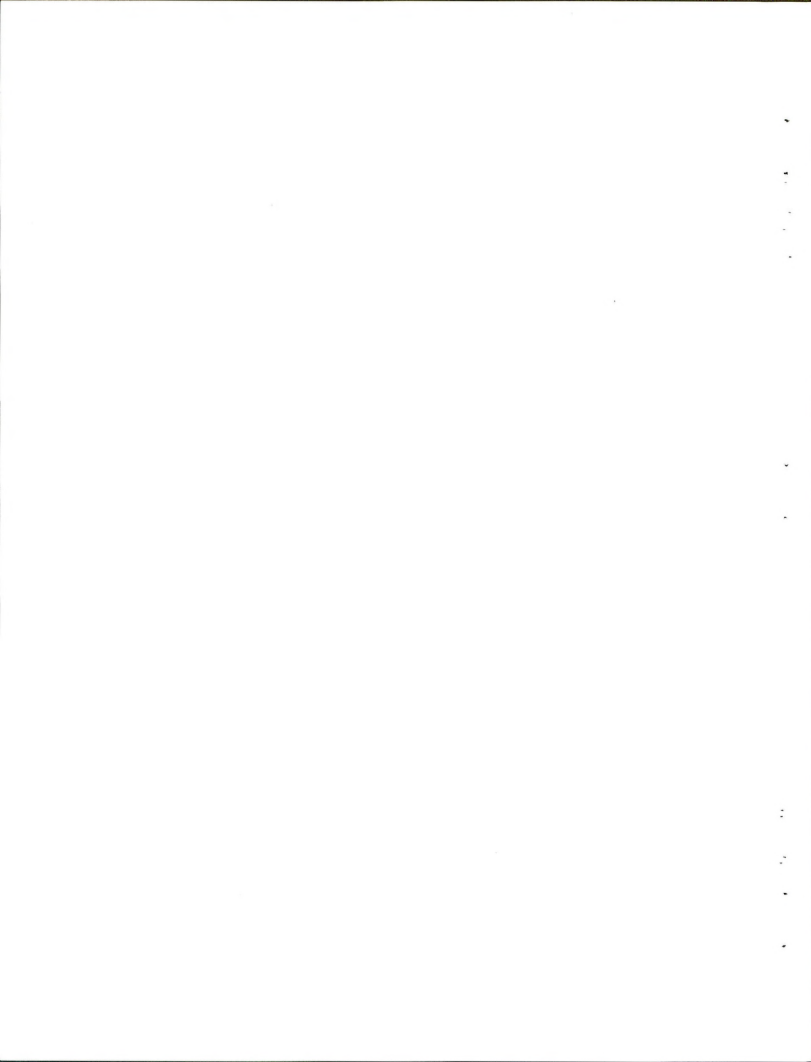
Section 62-312. State Parks and Recreation and Camping Grounds. The State Board of Land Commissioners may acquire and accept title in the name of the State of Montana by grant, dedication, gift, devise, donation or demise, to land suitable for public camping and public recreational use. The State Board of Land Commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this act shall be given an appropriate name by the State Board of Land Commissioners.

I know that you and the other Board members are well aware of the already heavy recreational use of our Flathead Lake facilities, and would not presume to editorialize on the benefits of these areas to the people of this state. If you believe that our request is worthy of consideration, I ask that you schedule it for discussion at the next meeting of your Board. If you require further information or would desire that any of our personnel be on hand at your meeting, you have only to call.

Sincerely,

S/ Frank

FRANK H. DUNKLE  
STATE FISH AND GAME DIRECTOR



April 13, 1966

3. REQUEST BY FISH AND GAME COMMISSION THAT TWO TRACTS OF STATE LAND BORDERING FLATHEAD LAKE BE SET ASIDE AS STATE PARKS UNDER THE PROVISIONS OF SECTION 62-312, R.C.M. 1947

Mr. Ralph Cooper and Mr. Wesley Woodgerd attended the meeting and presented the request of the Fish and Game Department.

The State Fish and Game Department is presently the holder of two leases on land being utilized for state park purposes bordering Flathead Lake. One lease comprises 48.68 acres and is at the site of Flathead Lake State Park. The other lease is newly acquired comprising 37.14 acres and the Park Department contemplates development of the area near Dayton, Montana, part of Lots 5 and 6, Section 18, Township 24 North, Range 21 West.

In view of the fact that part of the development is to be financed by the Bureau of Outdoor Recreation, a federal agency, they require that the Fish and Game Department show control of the land for a minimum of twenty-five years. The maximum term of lease that can be granted by this department is ten years which is not adequate for their purposes.

In view of the extreme need for public recreation areas adjoining Flathead Lake, it is recommended that the board give consideration to granting this request if possible under the laws of the State of Montana.

Mr. Anderson moved that by reason of the authority vested in the State Land Board under the provisions of Section 62-312, R.C.M. 1947 -

That portion of Lots numbered Five (5) and Six (6) in Section Eighteen (18) of Township Twenty-four (24) North of Range Twenty-one (21) West of the Montana Principal Meridian, lying south of U. S. Highway Number 93 -

be set aside for Elmo State Park, and that -

Lots numbered Five (5), Six (6) and Seven (7) in Section Twenty-nine (29) of Township Twenty-four (24) North of Range Twenty-one (21) West of the Montana Principal Meridian, save and except a parcel of land west of the Flathead Lake shore 200 feet in width, running north and south through said Lots which was previously set aside for State park purposes by the State Board of Land Commissioners -

be set aside for Flathead Lake State Park, to be used for recreational and educational purposes, and that the management of these parks be placed in the agency responsible for the management of State Parks pursuant to Section 62-304, R.C.M. 1947. Seconded Miss Miller. Unanimous.

4. REQUEST BY U. S. GOVERNMENT TO PURCHASE ADDITIONAL STATE LAND FOR A MISSILE LAUNCHING SITE

The United States of America, Corps of Engineers, Seattle Real Estate Division, requests the sale of the following tract. This acreage will be in addition to the lands patented to them in November, 1961 and February, 1962:

FEELON COUNTY

A tract lying in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 36, Twp. 27N., Rge. 1W., containing 5.59 acres, appraised at \$319.32 per acre.

(Commissioner recommends sale.)

Mr. Anderson moved that the request of the U. S. Government to purchase a tract lying in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 36, Township 26 North, Range 1 West, containing 4.59 acres, appraised at \$319.32 per acre be approved. Seconded Miss Miller. Unanimous.

5. REQUEST BY THE STATE FORESTER FOR AUTHORITY FOR TIMBER SALE IN FLATHEAD COUNTY

The following letter, dated March 21, 1966, was received from the State Forester:

"We have prepared a management cut of timber which has been estimated and appraised as follows:

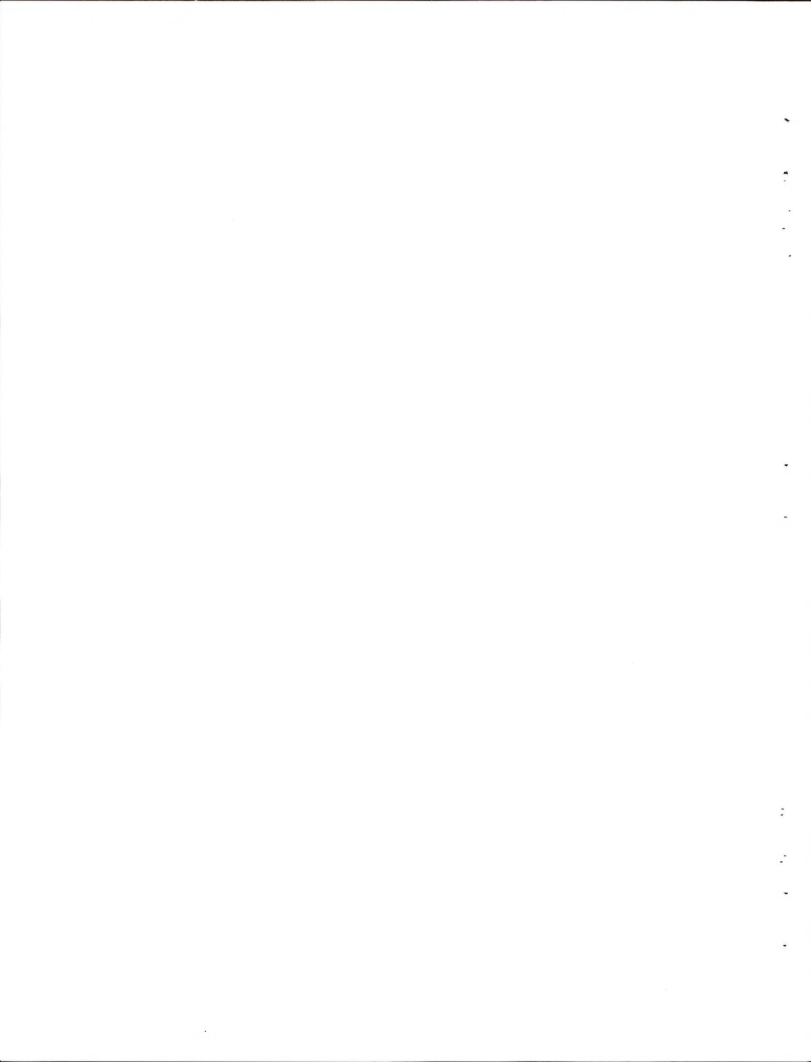
Flathead County - Sections 16, 18, 19, 20, 21, 28, T33N, R23W  
Sections 2, 3, 10, 11, 12, 13, 24, T33N, R24W

M bd. ft.	Species	@ per M bd. ft.	Stumpage Value	Total Value
659 M	White pine	\$18.75	\$12,356.25	
1 M	ponderosa pine	17.23	17.23	
5,231 M	larch	9.40	49,171.40	
2,675 M	Douglas fir	9.40	25,145.00	
1,479 M	spruce	5.65	8,356.35	
273 M	lodgepole pine	4.55	1,231.25	
664 M	cedar	2.45	1,626.80	
386 M	white fir	2.75	1,061.50	
162 M	dead	2.00	324.00	
				\$99,309.78

In addition to stumpage, there will be a brush disposal charge of \$2.50 per M bd. ft. and \$1.10 per M bd. ft. for timber stand improvement on all green timber cut.

It is my recommendation that this sawtimber be advertised for sale at not less than the appraised stumpage rates upon the Land Board's approval of the sale."

Mr. Anderson moved approval of timber sale as outlined in letter of March 21, 1966. Seconded Miss Miller. Unanimous.



that he has valuable knowledge of the lands involved.

Mr. Olsen moved that the request be denied. Mr. Mitchell seconded the motion.

Before the motion was put to a vote, Mr. Moulton suggested that perhaps it would serve the purpose of the Board just as well if the request for withdrawal of the applications be granted, and the lands be offered for sale by the Board without applications.

Mr. Olsen then withdrew his first motion, and moved that the matter be taken under advisement, and if some decision can be reached before Tuesday (the day of sale) Mr. Cox would be notified. Mr. Mitchell seconded the motion, and it carried, with the Governor not voting.

Meeting adjourned at 5 P.M. on motion by Mr. Mitchell seconded by Miss Gordon.

Approved:

*[Signature]*  
President

Attest:

*[Signature]*  
Secretary

SECRETARY'S NOTES: Upon adjournment of above meeting, arrangements were made tentatively for a meeting of the Board on Saturday, January 15, 1955. However, no meeting was arranged on the morning of January 15th. At 2:10 P.M. Attorney General Olsen telephoned P.M. Lieberg at home, that no meeting was held; at 2:25 P.M. he again phoned that the Board had gathered in the Governor's office, and had taken no action, and therefore the sale would go on as advertised, and requested that Mrs. Lieberg so advise Commissioner Bretzke and Mrs. Smith, the Mineral Clerk in Land Office. Mrs. Smith to notify Mr. Cox.

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REGULAR MEETING OF THE STATE BOARD OF LAND COMMISSIONERS  
WEDNESDAY, FEBRUARY 9, 1955. at 2:00 P.M.  
In Governor's Reception room.

Present: Governor J. Hugo Aronson; Superintendent of Public Instruction, Mary M. Condon; Secretary of State, Sam W. Mitchell; Attorney General, Arnold H. Olsen; and ex-officio secretary of the Board, Lou E. Bretzke.

Minutes of meetings of January 12 and 14 were unanimously approved as submitted, on motion by Miss Condon seconded by Mr. Mitchell.

BUSINESS CONSIDERED AS FOLLOWS:

1. ESTABLISHMENT OF HOOPER STATE PARK

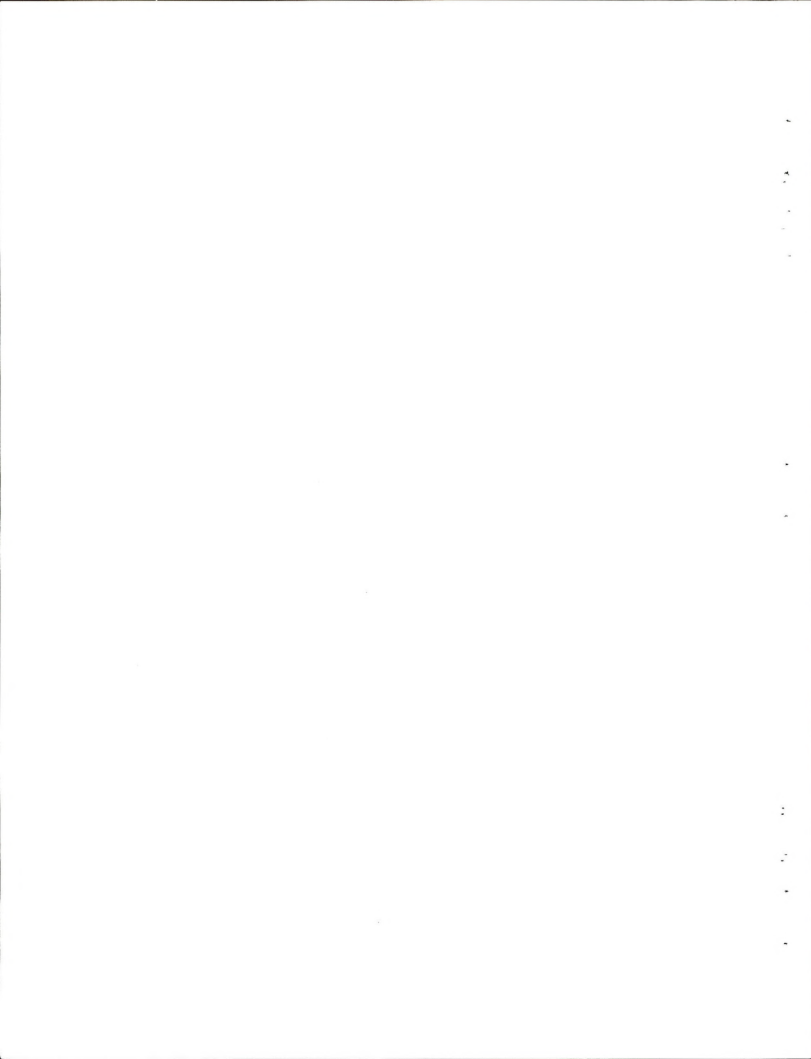
Ashley Roberts, supervisor of State Parks, presented to the Board a bargain and sale deed, Lewis and Clark County to the State of Montana (for park purposes) for "a tract of land in the Public Park Grounds and that portion of the 1/4 Section 24 lying adjacent to and north of said Public Park Grounds of the Lincoln Villa Site in said 1/4 Section 24, Twp. 14N., Rps. 9 West, N.P.M., Lewis and Clark County, Montana, more particularly described as follows: Beginning at the southeast corner of said 1/4 Section, which said point is also the southeast corner of said Public Park Grounds; thence from the said point of beginning westerly 1234.5 feet along the south line of said 1/4 Section to a point on the east property line of 14th Avenue of said Lincoln Villa Sites, which said point is the southwest corner of said Public Park Grounds; thence North 00°02' East 602.2 feet, more or less along said east property line of said 14th Avenue to the southerly right of way line of Montana State Highway #20; thence easterly along the south right of way line of said State Highway #20 to the point of intersection with the east line of said Section 24; thence southerly 604 feet, more or less, along the east line of said Section 24 to the said point of beginning, and containing in all 17.23 acres, more or less."

Miss Condon moved that we accept the land described in the deed above referred to, from Lewis and Clark County to the State of Montana, for park purposes, and that this land shall be set aside for state park purposes and called Hooper State Park. Mr. Mitchell seconded the motion and it carried unanimously.

2. PROTEST OF ED. M. EHRET, BELT, MONTANA AGAINST SALE HELD ON FEBRUARY 2, 1955  
BASED ON AND UNDER Section 16-10N-6E

In a letter received in the State Land Office February 5, 1955, (see item 2, Misc. papers No. 875) Attorney Richard V. Bottomly of Great Falls, Mont., states he was retained by Ed. M. Ehret of Belt, Montana, to protest against the sale of certain state land sold by the Commissioner on February 2, 1955 at the court house, Cascade County, involving the 1/4 Section 24, Twp. 14N., Rps. 9 West, N.P.M., of Sec. 36, Twp. 14N., Rps. 9 West, N.P.M. He hotly contends that Mr. Ehret was not notified of date, time and place of sale by the Land Department, and was only advised of the sale being in progress by one Mrs. Fluer of the county treasurer's office, too late for him to go from Belt, where he lives, to Great Falls and participate in the sale.

The usual procedure in the Land Office is to send a copy of notice of sale to each and every individual whose name appears on file as being interested in the sale, and this was undoubtedly done in this instance.





RESOLUTION

WHEREAS, heretofore at the request of the State of Montana and for the benefit of the State of Montana, the County of Jefferson Quieted Title to then deeded to the State of Montana, Section 27, Township 2 North, Range 3 West, M.P.M., in return for Section 16, Township 1 North, Range 2 West and then deeded back to the State of Montana the said Section 16, Township 1 North, Range 2 West, M.P.M., for the purpose of the Lewis and Clark park;

AND WHEREAS this trade was done for the purpose of getting the said Section 16 in the name of the State for park purposes and that that result has now been fully accomplished and the State of Montana has now the title to both Section 27, Township 2 North, Range 3 West and Section 16, Township 1 North, Range 2 West and the County of Jefferson is entitled to receive back from the State of Montana Section 27, Township 2 North, Range 3 West, M.P.M.

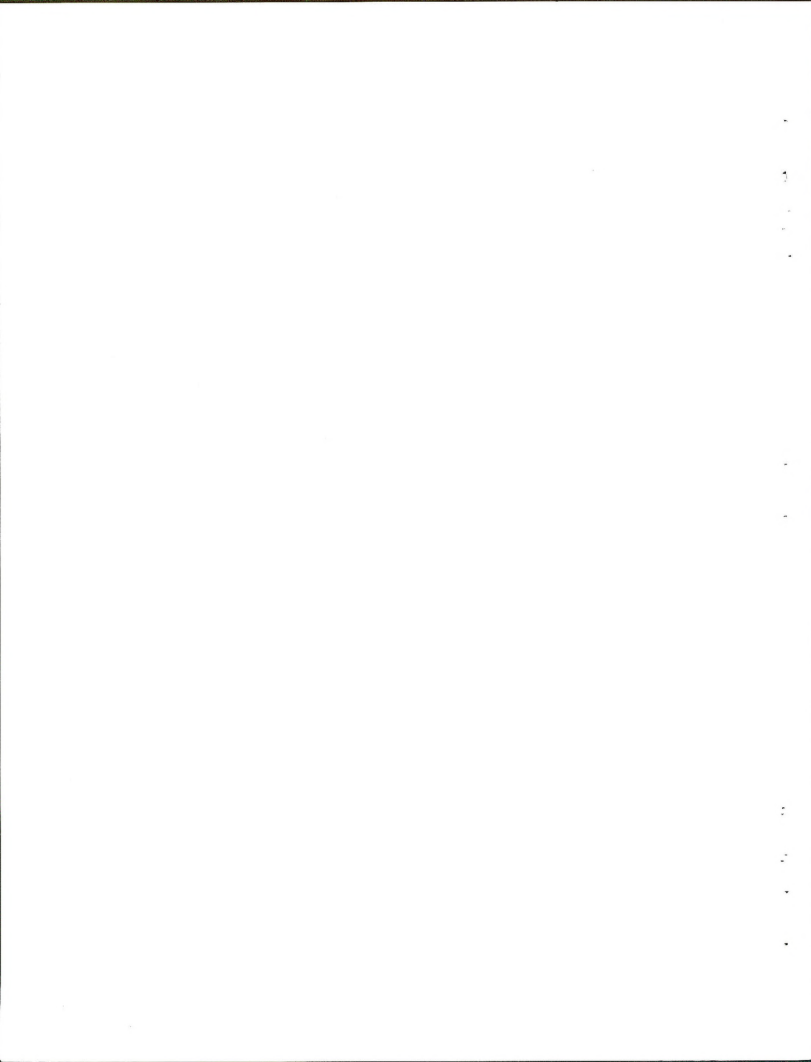
NOW, THEREFORE, be it resolved by the Board of County Commissioners of Jefferson County, State of Montana, that the County of Jefferson request the State of Montana and particularly the Commissioner of State Lands of the State of Montana to deed back to the County of Jefferson, State of Montana, Section 27, Township 2 North, Range 3 West, M.P.M.

AND BE IT FURTHER RESOLVED, that a copy of this resolution be immediately mailed to the Commissioner of State Lands of the State of Montana and the County Attorney and the chairman of the Board of County Commissioners be instructed to meet with the Commissioner of State Lands and the Department of State Lands at any meeting they may have in which the request contained in this resolution is heard.

Adopted this 7th day of April, 1948.

*Witnessed H.O.  
at \_\_\_\_\_ 14 \_\_\_\_\_*

*\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_*



6  
MONTANA WILDLIFE FEDERATION  
Education — Conservation

July 3, 1957

C  
O  
P  
Y  
Mr. Lou Bretzke  
State Land Commissioner  
Helena, Montana

Dear Sir:

The Montana Wildlife Federation in behalf of its 108 affiliated sportsmen's organizations and conservation clubs throughout the state, strongly urges your board to protect the interests of the general public of our state by setting aside for public use at least ten acres of school section 36, T. 15N, R. 3E lying in the Smith River Canyon.

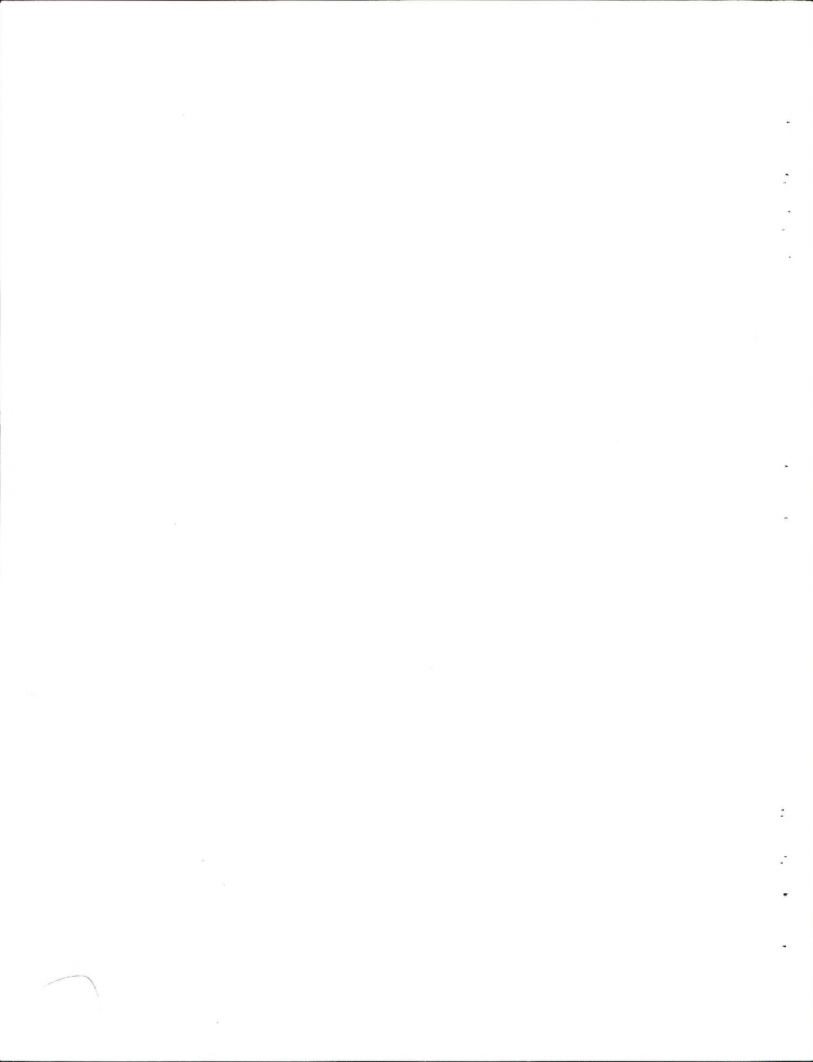
An extremely unfair situation has been in existence for some years in that the landowner leasing this section has conducted a private fishing club on land adjacent to the section and this allows only a few privileged citizens access to one of our state's more scenic and productive streams. It is becoming increasingly important for all of us to fight to protect for the general public access to recreational areas still not privately owned.

This area, lying nearly equidistant from Helena and Great Falls, is fairly close to a large segment of Montana's population and would unquestionably have great use. It is the stated opinion of the State Park Department, the Department of State Lands, the Montana State Fish and Game Commission and the State Department of Fish and Game that the value of this land as a public recreational area would be much higher than the value received for grazing privileges on the section.

To correct a most selfish use of state lands, and for the above reasons as well as others, the Montana Wildlife Federation again urgently requests your group to set aside the above mentioned land as a permanent public recreational area.

Sincerely yours,

/s/ John M. Stewart  
Dr. John M. Stewart, Sec.  
Montana Wildlife Federation



4  
6  
July 15, 1957

Mr. Theo. Cope,  
Rte. 1,  
Belgrade, Montana.

Lease 40673

Dear Mr. Cope:

I wish to advise you that the State Board of Land Commissioners in regular session held on July 10, 1957, set aside ten acres of school — section 36, Twp. 15N., Rge. 3E., which you have under lease, as a state park for public use. They also granted a right-of-way across this state land for ingress and egress to this ten acre plot.

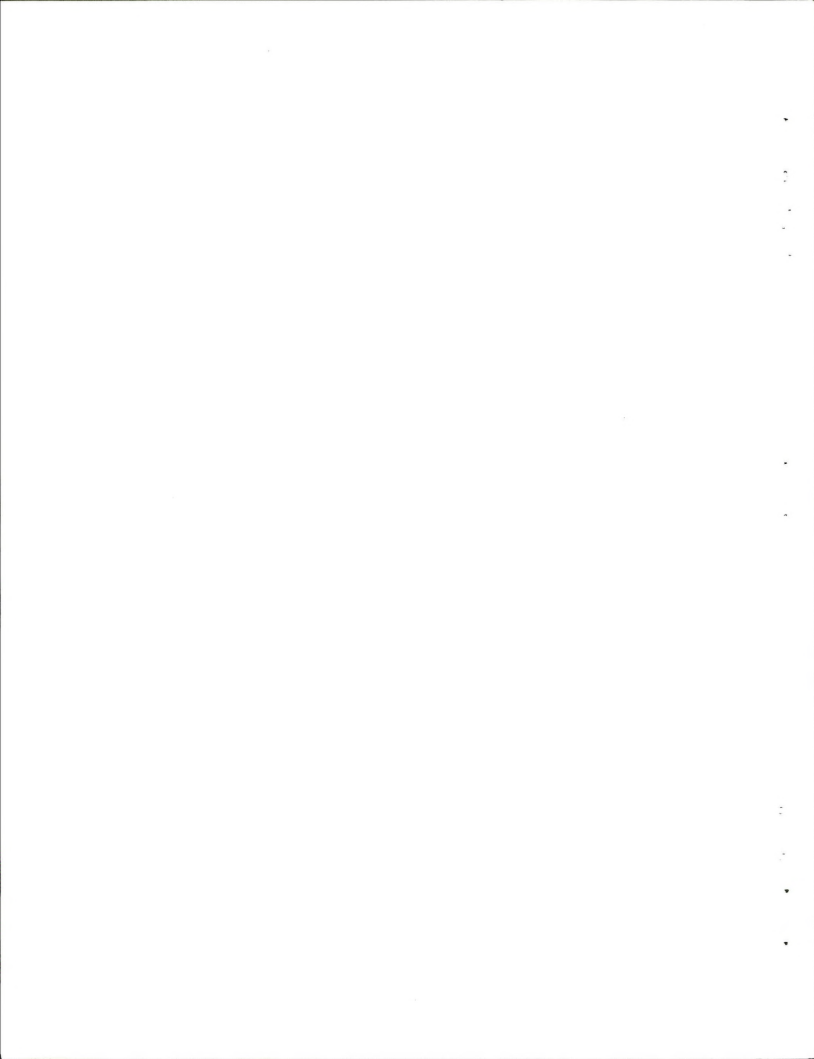
Access from a public highway to this state land must be provided through other sources, as the Land Board assumed no jurisdiction other than pertaining to the state owned property.

Adjustment on your lease will be made at some future date when the state park is officially taken over and use of this ten acre plot is denied you.

Very truly yours,

Lou E. Bretzke, Secretary  
STATE BOARD OF LAND COMMISSIONERS

LED:ML



# STATE OF MONTANA



MAY 9 1967

STATE OF MONTANA  
DEPT. OF  
STATE LANDS AND INVESTMENTS

DEPARTMENT OF

FISH AND GAME

Helena, Montana  
May 8, 1967

The Historical Society  
Veterans-Pioneers Memorial Building  
State Capitol  
Helena, Montana

Dear Members of the Society:

I know that we share a deep interest in the preservation and enjoyment of Montana's historic heritage.

May I at this time draw to your attention an excellent opportunity to set aside as a State Historic Monument one of the most interesting and picturesque landmarks along the Missouri Waterway below Fort Benton. This is Citadel Rock, some 22 miles downriver from the Virgille Ferry. This striking formation of igneous rock stands out boldly in this famous White Rocks section of the river. It remains virtually unchanged from the days of early exploration and was sketched, as you know, by the artist Karl Bodmer in 1833.

Fortunately, this formation is located on a section of state land, Lot 7, Section 36 Township 24 North, Range 13 East.

We respectfully suggest that the Montana Historical Society recommend to the State Land Office that all of Lot 7 (38.91 acres) be designated a state monument, under the state code 75-1202, Historic Structures and State Monuments,

We have informally discussed this matter with Mons Teigen, State Lands Commissioner and he looks favorably upon the proposal. It is probable that the new designation would not disrupt the present use of the area for grazing, but would definitely protect this unique natural feature, truly a landmark in Montana's vivid river history.

We would be most pleased to meet with you at any time to discuss this or any other possibility of historic preservation in which we might be helpful.

Very sincerely,

FRANK H. DUNLAP  
STATE FISH AND GAME DIRECTOR





The following action was taken by the State Board of Land Commissioners at their regular meeting held June 14, 1967:

Mr. Anderson moved that under the provisions of Section 75-1201, RCM 1947, Citadel Rock, located on Lot 7 of Section 16, Twp. 24N., Rge. 13E., be declared an historic structure and set aside as a state monument to be maintained in its present state from and after this date forward. Motion seconded by Miss Miller and unanimously passed.

STATE OF MONTANA

DEPARTMENT OF STATE LANDS AND INVESTMENTS )  
: ss

I, Mons L. Teigen, Commissioner of State Lands and Investments for the State of Montana and ex-officio Secretary of the State Board of Land Commissioners, DO HEREBY CERTIFY that the foregoing is a true full and correct copy of action taken by the State Board of Land Commissioners declaring Citadel Rock an historic structure to be set aside as a state monument as the minutes of their regular meeting held on June 14, 1967 appear of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the State Board of Land Commissioners of the State of Montana, this 19th day of June, 1967.

Commissioner of State lands and Investments of the State of Montana, and ex-officio Secretary of the State Board of Land Commissioners



771-1



DEPARTMENT OF ANTHROPOLOGY

University of Montana  
Missoula, Montana 59801  
(406) 243-0211

April 16, 1971

Mr. Sam Gilluly, Director  
State Historical Society  
Memorial Building  
Helena, Montana 59601

Dear Mr. Gilluly:

As you are aware, the Montana Antiquities Act (Revised Codes, repl. vol. 4, c.12, secs. 75-1201 through 75-1206) requires a permit, for examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity on state lands, which may be granted by the Commissioner of Public Lands upon recommendation by the Board of Trustees of the State Historical Society.

Because our organization, the University of Montana Statewide Archaeological Survey, is involved in archaeological survey of state lands, and in all probability will become more involved in survey and excavation of archeological sites because of the letting of coal leases on state lands, I request that you bring this matter before the Board at your next meeting and, should they be willing, recommend the granting of a general permit by the Commissioner of Public Lands to our organization.

Sincerely yours,

*Floyd W. Sharrock*  
Floyd W. Sharrock  
Director, Statewide  
Archaeological Survey

FWS:sg



July 20, 1954

5. L-1366 Missoula County and City of Missoula  
SW 1/4 Sec. 30, T13N, R18W. Free use recommended.
6. L-1224 Montana State Highway Commission -- Helena, Mont.  
SW 1/4 Sec. 30, T13N, R18W...radio station. No recommendations.

Mr. Olsen moved free use permits be granted for short wave radio towers, or charge made for assessments, in the discretion of the State Forester. Miss Condon seconded the motion and it carried unanimously.

VII SCHOOL SITES -- It has been the policy of the State Forester to issue free use permits to all school districts for the purpose of building and maintaining a public school. No recommendations.

1. L-0215 Bissell School District #58 -- Olney, Mont.  
Constructing a school house building and maintaining a public school on 2.45 acres in Sec. 18, T30N, R22W.
2. L-042 School Board of District #79 -- Kila, Mont.  
Constructing a public school building on 2.45 acres in Sec. 16, T27N, R23W.
3. L-177 Battle Butte School District #40 -- Niarada, Mont.  
1.4 acres in Sec. 24, T26N, R23W, for constructing a school house building and maintaining a building thereon.
4. L-239 School District #53 -- Olney, Mont.  
Lot 1, Sec. 7, T32N, R23W for constructing a school house building and maintaining a public school.

Mr. Olsen moved school sites be granted free use permits as listed. Miss Condon seconded the motion and it carried unanimously.

VIII RECREATION -- A certain amount of recreation on state lands is always taking place in the form of hunting, camping, etc. in the form of free use. Certain areas lend themselves to specific recreation areas such as ski courses, camp sites, parks, etc. In the following permit, the grazing and timber is not hurt in any way by the location of a ski course since skiing is a winter sport and the area is unfit for either winter grazing or winter logging. For this reason, a free use permit was granted. The State Forester would not recommend a hard and fast rule in relation to recreation sites, but would suggest that each site be determined as a separate case. It is his feeling that in this case a permit is not necessary as skiing and other forms of recreation are carried out on state lands throughout the State without benefit of permits. If at any time a commercially operated profit-making lift or hotel be used in connection with a ski area, then a charge should most certainly be made.

1. L-0963 Bear Canyon Recreation Area -- Bozeman, Mont.  
Ski course in portion of Sec. 1 and 12, T3S, R6E and SW 1/4 Sec. 6, T3S, R6E.

Mr. Olsen moved that organized recreation on state lands for profit, be not granted the use of state lands until the matter has been considered by the State Land Board. Miss Condon seconded the motion, and it carried unanimously.

State Forester further states: "Any free use permits not appearing on the above listing were not subject to controversy, i.e., REA right-of-ways, etc. and the agencies have all been advised that they no longer hold a free use permit and must apply for a right-of-way per the requirements under the State Law."

RULES AND REGULATIONS ON STATE LANDS LEASED FOR HOME OR SUMMER CABIN SITES  
AS PRESENTED BY THE STATE FORESTER

The following minimum specifications will be observed on all state lands leased for home or summer cabin sites:

1. Area must be kept free of debris, garbage, trash and any other unwanted objects. This includes lakeshores or streams when adjacent to area.
2. Area must be kept free of fire hazards.
3. Incinerators, fire places, stoves or any other type of burner must be fire proofed by use of spark proof screens. All fires must be extinguished prior to leaving area.
4. The use of fire arms or fire works is not permitted on the area.
5. Felling of live or green trees is prohibited.
6. All buildings constructed must have a presentable and pleasing appearance. Tar paper or similar shoddy appearing siding is not permitted.
7. Sewage disposed will be done in accordance with regulations issued by State Health Department.
8. Open pits, ditches or other unsafe conditions must be eliminated.
9. The use of these sites for personal profit is contrary to state law. Any site sub-leased, rented or in any other way used to provide income to lessee must be done with approval in writing by State Forester. In such cases a percentage of the revenue, determined by the value of use of improvements on the site, will be paid to the State of Montana. Additional cabins, stores or any other use falls in this category.





MEMBERS OF THE STATE  
BOARD OF LAND COMMISSIONERS

GOVERNOR J. HUGO ARONSON,  
CHAIRMAN, HELENA

HARRIET MILLER,  
SUPT. OF PUBLIC INSTRUCTION, HELENA

FRANK MURRAY,  
SECRETARY OF STATE, HELENA

FORREST H. ANDERSON,  
ATTORNEY GENERAL, HELENA

LOU E. BRETZKE,  
SECRETARY AND COMMISSIONER OF STATE  
LANDS AND INVESTMENTS, HELENA

MEMBERS OF THE  
STATE BOARD OF FORESTRY  
GOVERNOR J. HUGO ARONSON,  
CHAIRMAN, HELENA

D. F. FABRICK, CHATEAU  
CHARLES L. TEBBE, MISSOULA  
GEORGE NEFF, BONNER  
MARK SCHOKNECHT, LIBBY  
SYLVAN J. PAULY, DEER LODGE  
ROSS WILLIAMS, MISSOULA  
HOLLIS YOUNG, CRESTON

State of Montana  
OFFICE OF  
**STATE FORESTER**

ROBERT W. ARNOLD,  
ASSISTANT STATE FORESTER  
FOREST MANAGEMENT

WILLIAM K. GIBSON,  
ASSISTANT STATE FORESTER  
FOREST PROTECTION

GARETH C. MOON  
STATE FORESTER

NORTH WING (E) JUMBO HALL  
MONTANA STATE UNIVERSITY  
MISSOULA, MONTANA

DON M. DRUMMOND,  
DEPUTY STATE FORESTER

OTHA O. ISAACS,  
ASSISTANT STATE FORESTER  
FISCAL

SUP L-1159



Mr. Lou E. Bretzke, Secretary & Commissioner  
State Lands and Investments  
The Capitol  
Helena, Montana

Dear Mr. Bretzke:

The State Park Division has requested that we give them a permit for lots 4 and 5, Section 36, T22N, R30W, to expand a campground which has been previously obtained from the Washington Water Power Company under a long term agreement.

These lots are presently leased to Mrs. S. G. McAllister, Thompson Falls, who has assigned these lots to the Washington Water Power Company contingent on a subsequent assignment of the lots to the State Park Division.

The State Park Division has asked our cooperation in this matter by issuing a free use permit.

Due to the increased recreational pressure on all state forested lands, State Forester requests authorization to issue a free use permit to the State Park Department on the above described land for use as a public campground.

Very truly yours,

*Gareth C. Moon*  
Gareth C. Moon  
State Forester

GCM:bbh

cc: Washington Water Power Company  
Mrs. S. G. McAllister  
State Park Division





STATE OF MONTANA

10/6



DEPARTMENT OF

FISH AND GAME

Helena, Montana  
April 12, 1948

State Land Board  
Capitol Building  
Helena, Montana

Gentlemen:

It has come to our attention that certain state lands are being considered for private oil developments in and surrounding the Federal Red Rock Lake's Refuge in Beaverhead County.

This refuge is one of the most unique on the entire North American Continent because it is here that the rare Trumpeter Swan has been able to hold its own against extinction. It is conceivable that successful oil development would render the refuge completely unusable. In addition to possible damage by oil, human activities in or near the refuge might cause a disturbance factor great enough to effect the Trumpeter Swan population adversely.

These facts should warrant special consideration for all state lands located in townships fourteen south, range one east; fourteen south, range one west; fourteen south, range two west; thirteen south, range one west; and thirteen south, range two west. The State Fish and Game Department and the U. S. Fish and Wildlife Service would appreciate the opportunity to appear before the State Land Board in order to further explain the matter and come to some agreement that would protect the wildlife interests of the area in question.

Respectfully,

*A. A. O'Clair*  
A. A. O'CLAIRE  
STATE FISH & GAME WARDEN

hpr

cc - Ward M. Sharp, Red Rock Lakes Refuge  
Kenneth McDonald, Portland  
Dr. Clarence Cottom, Washington, D. C.



April 28, 1948

Mr. A. A. O'Claire,  
State Fish & Game Warden,  
Helena, Montana.

Dear Mr. O'Claire:

The matter of oil development on state lands in and surrounding the Federal Red Rock Lake's Refuge in Beaverhead County was taken up at the last regular meeting of the State Board of Land Commissioners. The Board directed that notation be made on the records of state owned land in the townships listed in your letter: (14S-2W; 14S-1W; 14S-1E; 13S-1W and 13S-2W,) that no lease for oil exploration be considered without Board consent.

Yours very truly,

J. W. Walker, Secretary  
STATE BOARD OF LAND COMMISSIONERS

JW:HL

b



MEETING OF STATE  
DAY MARCH 14, 1956, 2:00'clock P.M.  
In Governor's reception room.

Members present.

Meetings of Feb. 8, 14, and 27, 1956, unanimously approved.

CONSIDERED:

Unfinished Business

REQUEST OF GULF OIL CO. FOR PERMISSION TO DO SEISMOGRAPH WORK ON LANDS IN  
LEWIS & CLARK COUNTY COMING UP FOR BIDDING ON MARCH 19  
John Flugstad of Oil & Gas Commission advised Board that no meeting had  
been possible with the oil men on this subject, and matter was dropped for present.

\* OIL & GAS LEASING ON SUN RIVER ELK RANGE

Miss Condon moved "we withdraw tracts Nos. 63, 65, 66, 67, 68, 69, 70, 71 and 72  
located in Sun River Elk Range, from the sale scheduled March 19th."

Motion seconded by Mr. Arnold, carried unanimously.

Gov. reported he had made a personal inspection of Reserve; found it in excellent condition.

Miss Condon further moved that "Commissioner of Lands be instructed to immediately  
enter negotiations with the Fish and Game Commission to trade other lands including  
mineral rights in an equivalent amount, with the Land Board so that this matter  
of oil exploration on this valuable elk range will never again come before this  
Land Board or any future Land Board. Seconded by Mr. Olsen.

Vote: Olsen and Condon, yes; Aronson and Arnold, no. Not carried.

*Condon of Fish & Game. Olsen reply.*

Mr. Olsen moved that the Commissioner of Lands mark each of the cards concerning  
land in which Fish & Game Department has an interest. Mr. Arnold seconded. Unanimous.

Miss Condon moved that the Land Board give consideration to the possibility of  
making a trade of equal acreage and equivalent mineral rights with the Fish &  
Game Department at some future date. Olsen seconded. Unanimous.

Mr. Olsen thanked the gentlemen of Wild Life Associations who came to visit us.

(Some 40 or 50 visitors were present)

Mr. Dennison from Shelby requested information as to ownership of the land on  
the Reserve. Stated Toole County sportsmen would be in favor of trading the land  
as fast as possible.

Sam Lane of Leer Lodge, representing Powell County Sportsmen Assn., thanked Board  
for their action.

Weaver of Cascade County Wild Life Assn., left names of groups in the state of  
Montana who have gone on record as opposing the oil & gas leasing on the Elk Reserve.

- 1 REQUEST FOR APPROVAL OF OPERATING AGREEMENT, MOBIL PRODUCING CO., CARTER  
OIL CO. AND SINCLAIR OIL & GAS CO.

Mr. Olsen moved the unit agreement submitted by the Mobil Producing Co., Carter  
Oil Co. and Sinclair Oil & Gas Co. be rejected. Miss Condon seconded. Unanimous.  
(Copy of Attorney General's letter to be transmitted to oil companies)

- 2 REQUEST THAT MONTANA DAKOTA UTILITIES ACCOUNT FOR 100% OF GAS TAKEN FROM SEC. 16-6N-60E  
Attorney E. C. Toomey representing the Mont. Dak. discussed letter submitted by the Co.  
Mr. Olsen moved the matter be taken under advisement giving atty. gen. office an  
opportunity to further study. Mr. Arnold seconded. Unanimous.  
(Mr. Olsen stated he would advise Mr. Toomey as soon as decision had been arrived at)

- 3 REQUEST THAT LAND BOARD ACCEPT DEED TO LAND ON WEST SHORE OF FLATHEAD  
LAKE FOR KAN STATE PARK, TO BE CALLED WEST SHORE STATE PARK.



## ENABLING ACT

states, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

### Operation and Effect

This is a general granting clause and shows clearly the interest of the congress

in the common schools of the newly admitted state. Texas Pacific Coal & Oil Co. v. State, 125 M 258, 234 P 2d 452, 453.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased lands, interest on deferred payments on lands sold, interest on funds arising





## ENABLING ACT

from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

**NOTE.**—This section given as last amended by an act of congress, April 13, 1948, Ch. 183, 62 Stat. at L. 170. This amendment was accepted by the state of Montana by Chapter 18, Laws of 1949 (83-502).

### Act Not Objectionable As Against This Provision

Treating section 81-1702, authorizing the state land board to enter into pooling agreements relative to state lands for the extraction of natural gas, not as a lease but as a sale of an estate or interest therein, the limitation of this section that such lands cannot be sold except at public sale after advertising, has application only where the land as a whole is sold, not where merely an interest or estate therein such as the gas or oil therein, is disposed of. *Toomey v. State Board of Land Commrs.*, 106 M 547, 559, 81 P 2d 407.

### Disposition of School Land Grant Funds

Section 12, Article XI of the state constitution providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions, and sections 11, 14 and 17 of the enabling act, held not to prohibit use for erection of normal school buildings of income from land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. *State ex rel. Blume v. State Board of Education of Montana*, 97 M 371, 34 P 2d 515.

### Does Not Prohibit United States from Condemning School Lands for Public Works

The Montana enabling act, prohibiting the state from disposing of school lands except at public sale after advertising, does not prohibit the United States from condemning school lands in connection with construction of project in program of public works (National Industrial Recovery Act Secs. 202, 203(a), 40 U.S.C.A. Secs. 402, 403(a)). *United States v. State of Montana*, 154 F 2d 191, 196.

### Farm Loan Act Not in Conflict

The "primary" plan of the farm loan act, providing for investment by state

board of land commissioners of state funds in farm mortgages, does not conflict with this section of enabling act. *State v. Stewart*, 53 M 18, 21, 161 P 309.

### Oil and Gas Leases

The amount bid over the minimum of 75 cents per acre as established in section 81-1703 is considered part of the rental and thus placed in the common school interest and income fund to be apportioned and distributed annually to the several school districts in the state as provided in section 5, article XI of the constitution of Montana. *State ex rel. Diegraber v. Sheridan*, 126 M 447, 254 P 2d 390. (See, however, dissenting opinions of Justices Anderson and Angelman in 126 M 447, 254 P 2d 390 on pages 397 and 403 respectively.)

The 1953 amendment of section 81-1702 by chapter 122, Laws of 1953 is not inconsistent with federal law. *State ex rel. Johnson v. State Board of Land Commrs.*, 348 U S 961, 99 L Ed 750, 75 S Ct 524, reversing and remanding *State ex rel. Jones v. State Board of Land Commrs.*, 138 M 462, 279 P 2d 303, which had held that oil and gas leases issued under section 81-1702 as amended in 1953 for 20 years and "as long thereafter as oil and gas in paying quantities shall be produced" were not for a term of years and hence violative of section 11 of the enabling act.

### Operation and Effect

The enabling act restrictions apply to mineral rights on state lands. A lease of the mineral rights by the state for a period of 5 years, made in 1925, with options to renew, cannot run in total more than 20 years, since congress in 1921 amended section 11 of the enabling act by the act of Aug. 11, 1921, 42 Stat. 158 which limited such leases to 20 years and the amendment was accepted by Montana in 1927 by Laws of 1927, chapter 108 (S 1701 et seq.). *Texas Pacific Coal & Oil Co. v. State*, 125 M 258, 234 P 2d 452, 453.

### References

*State ex rel. Wilson v. State Board of Education*, 102 M 165, 174, 56 P 2d 1079.



1  
*Legislation requested by Attorney General*

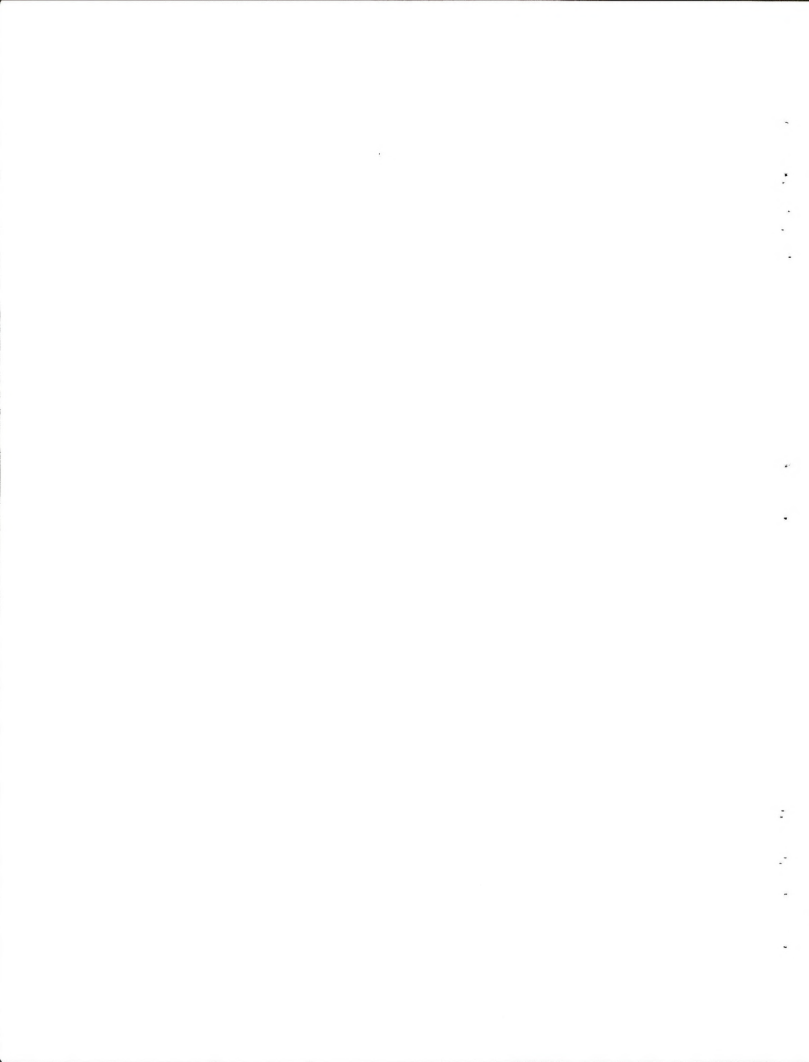
\_\_\_\_\_ BILL NO. \_\_\_\_\_  
INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE STATE BOARD OF LAND COMMISSIONERS TO ACQUIRE LAND WHICH IN THEIR DETERMINATION IS OF ARCHEOLOGICAL, HISTORIC OR SCIENTIFIC INTEREST AND SHOULD BE PRESERVED FOR POSTERITY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. The state board of land commissioners is hereby authorized to acquire land which they have determined is of archeological, historic or scientific interest and should be preserved for the benefit of the people. The acquisition of such land may be by gift, bequest, purchase, lease, or exchange of other state land of equal value. Upon acquisition of such land, the state board of land commissioners is hereby authorized to enter into contracts or agreements with the federal government, other departments or agencies of the state government, county and municipal government, as may be necessary to the proper care and management of the object to be protected and preserved for posterity.

Section 2. This act shall be in full force and effect after its passage and approval.



## CHAPTER 2

### Summary of Recreation Leasing Possibilities

The Legislature and the State Board of Land Commissioners have recognized the value of State Trust Land for recreational use and have attempted to formulate laws and policies which would make this value available to the citizens of the state.

One of the aspects of recreational use on State Trust Land which has received the most attention by the legislature and the state is utilization of specific parcels for parks and fishing access. This aspect still presents a problem in arriving at an adequate procedure to maintain the purpose of the Trust lands to support the schools and to make the recreational values available to the general public.

#### I. Land Board activity regarding Institution of Long-Term Recreation Leases

The State Board of Land Commissioners entered an agreement with the Fish and Game Department, July 30, 1952 - September 19, 1957, which initiated an arrangement for recreational use of state lands (Appendix, 1). The agreement asked Fish and Game to examine and appraise all tracts of state land adjacent to lakes and streams in Montana for the value of the site for recreation. Fish and Game also would determine the importance of the land as public access to the water while taking into account any possible conflict of the present land use with that proposed access. At the conclusion of such study Fish and Game would submit written reports of these appraisals and recommendations to the State Board of Land Commissioners.

The 1952 agreement reserved, from sale for ninety-nine years, lands which were determined to be of recreational value by the State Board of Land Commissioners upon recommendation of Fish and Game Department; and required that the Board formulate and enforce regulations allowing public access to these lands. Attorney General Forrest H. Anderson determined that such an agreement was invalid, September 19, 1957, for two reasons: (1) The term was unreasonable and would take control over the land from the State Land Board, who must act as trustees of the land; and (2) the law requires that the Board only dispose of the land for full market value. The 1952 agreement granted interests in land with no provision for payment. The Attorney General concluded, however, by raising the point that the Land Board, by resolution, might achieve some of the results of such an agreement (Appendix, 2).

At the present time the State Land Department is engaged in a potential recreation inventory of state lands which is similar in many respects to the Fish and Game study. Interdepartmental coordination concerning state lands which have a high degree of potential recreational value will aid the Land Board in determining whether a particular parcel of land should be utilized for recreational purposes.

The Board has sometimes designated state land for recreational use when it was determined that the public would be benefited thereby. Statutes which grant the Land Board authorization to exercise its powers to designate state land for recreational use in Montana are in effect. The Land Board may grant easements for public uses 81-802, R.C.M. (1947). The Board may accept gifts, donations or contributions of land suitable for forestry or park purposes, 81-1103, R.C.M. (1947) (Appendix, 3).

(Appendix, 3). And, under 62-312, R.C.M. (1947) rather broad powers are given the Board to set aside suitable tracts of land for the purposes of recreation. Land Board actions in this regard are summarized in Chapter 1 of this paper. Although the constitutionality of some of these provisions might be called into question, a plan whereby the recreational values of state land would be utilized to compensate the trust fund should be considered.

## II. Proposal to Initiate Long-Term Recreation Lease Procedures

One possibility that should be considered in long-range recreation planning regarding state lands would be a leasing arrangement whereby the Fish and Game Department, any other government agency, or a private developer interested in commercial recreational development, might acquire a 25 year or other such long-term recreation lease from the State Land Department. Such a lease could put to the public use any parcel of state land which (1) has a high degree of potential recreational value, and (2) where the conflict with present land use is minimal or the new leasing arrangements are satisfactory to the lessee and the state, and (3) where difficulties having to do with access to the land can be overcome.

The Enabling Act (Appendix, 4,5) does not limit possible leasing arrangements to ten year periods. "Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may provide" (Emphasis added). Leases for the purposes of grazing and agriculture are limited to ten years but oil and gas exploration lease terms are left indeterminate, to be fixed by the legislature, and leases for development of hydroelectric power may be for a term of

fifty years. There is no mention in the Enabling Act of the grant of leases for public recreational use. But, it seems clear that such a leasing provision could be instituted by the legislature.

The State Board of Land Commissioners must provide for the trust which has been set up for permanent school funds. Thus, the full market value of the interest disposed of should be secured by the State Land Department. The institution of a twenty-five year recreational use lease might prove a viable means of producing increased income to the trust as well as being of greater benefit to the citizens of Montana than the present disposition of some parcels of state land.

The statutory provisions of the State of Montana lend some authority to the institution of a twenty-five year recreational lease to be issued by the State Land Department.

"... the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state;..."  
(Emphasis added) 81-103, R.C.M. (1947) (Appendix, 6)

The major principle to our inquiry must be to determine the best means by which to compensate the trust. A thorough study of the benefits to be afforded by a recreation lease is necessary to insure that state lands are put to their best possible use.

A twenty-five year recreation lease would be of assistance not only to the potential lessee's plans for development of recreation sites but also would have several practical values which would benefit the lessee and the State Land Department. (1) In order to acquire federal funding from the Bureau of Outdoor Recreation, the State Fish and Game Commission must show ironclad land control for the effective



life of the improvements to be installed. The Bureau of Outdoor Recreation places a minimum of twenty-five years on this consideration. This requirement would be applicable to any interested governmental agency. With federal financial assistance, potential lessees should be able to develop recreation sites on state lands which will greatly benefit the citizens of the State of Montana. (2) A twenty-five year lease would allow the Fish and Game Department a long enough time period to administer licensing procedures or user fees which might prove to be profitable to both departments. (3) An extended lease of this nature would act as an incentive to private enterprise interested in commercial recreational developments on Montana state lands. (4) Special recreational leases on parcels to be used for recreation would be of benefit to the State Land Trust fund. Administrative costs might be lessened because of the longer term of the lease, and with provision for reappraisal of lease value at five year periods, income should be measurably increased. Many of the parcels now held under standard grazing leases might be well suited to subsidiary leases for development of wildlife habitat or public access which would increase benefit to the trust without lowering the value of the lease to the primary user.

Such an arrangement is in keeping with the concept of multiple use of public lands and Montanans would probably be amenable to a program of user fees which would enable them to have ready access to well-developed recreation sites on State Lands. A twenty-five year

lease, in terms of the improvements which must be made in order to render a site suitable for recreational use is not unreasonable. There are, of course, many difficulties which are presented by such a leasing system, but an effort to solve these problems by the several departments concerned may prove to be of great benefit to the State of Montana. Thus, the Land Board should initiate steps to ensure that the recreational value of a piece of land should always be taken into account in the disposition of state lands.

Provisions for twenty-five year and other such long-term recreation is not the only land use which would be more feasible under a twenty-five year lease. Commercial and Industrial uses could be expanded on State Trust Land to the benefit of the trust if long-term leases were available for these uses.

III. Means by which Other States Provide for Recreational Development  
(Results of Questionnaires mailed to other states)

A. States which have no distinctive recreation leasing procedures.

The lands granted to the State of Nevada under the original land grants were sold under contract to purchase or by outright sale. Thus, Nevada has never leased lands for recreational purposes.

In South Dakota the State Fish and Game Department is conducting a survey for recreation on State Trust Lands. All trust land which is used for recreation is purchased at regular public auction by the Fish and Game Department.

North Dakota also sells lands to the State Game and Fish Department for recreational uses. Three to five year agricultural leases are issued for the purpose of commercial recreation developments.

Nebraska has no program regarding recreational uses on State-Owned lands. One tract of 320 acres is leased to a Commercial Recreation Development Company, but the rent is only calculated as the highest agricultural rent that could be charged in the area.

B. Responses from States which lease lands for ten years or less for recreational development.

Idaho has six leases for winter sports compounds, one for a marina and one resort lease. The lease term in Idaho is limited by the Constitution to a ten year period. Rental is either a flat rate based on 6% of the land value, or a flat minimum rate plus a percent of the gross based on the kind of business. Discussions are now under way in Idaho to establish a standard leasing procedure for lands required by the Fish and Game Department for access and for wildlife habitat.

Alaska leases some concessions, generally in connection with the operation of a public recreation area. These leases are usually negotiated annually and the return to the State is on a percentage basis.

Arizona leases lands at variable terms of up to 10 years for the purposes of speedways, glider field, trail bike grounds and public parks. The trust is compensated through an annual percentage return on the appraised worth of the land being used.

Oregon has leasing for commercial recreation development under consideration. This would include monthly or annual rental trailer parking at two sites on the coast and cabin sites in two other locations in Eastern Oregon. Recreation lease terms would be flexible; it is not clear from the questionnaire whether this might be longer than ten years. Rental would be determined through appraisal plus negotiation. Bidding, if utilized, will be conditioned for award to the best (environmental, economic, etc.) plan for development and management.

C. States which lease State-owned lands for periods of 10 years or longer for recreational purposes.

Wyoming has two leases of up to 25 years for skiing developments. Rental for such operations is based on the appraised values and comparable leases on private and federal lands. All plans of development must be board approved.

California has in excess of 3000 commercial and recreation development leases on State and sovereign lands. They are for a term of up to 49 years. The rent is six percent of the fair market value annually and rent is reviewed at five year intervals.

Colorado has one proposed commercial recreation lease. If accepted, the lease term would be fifty years subject to review and revision of the rent at the end of each five year period. Grazing and agricultural leases reserve the right to put the land to multiple use by granting subsidiary leases upon said premises or any part thereof at any time, for any purpose other than the rights specifically granted, provided such subsidiary leases do not prevent the reasonable exercise of said rights and privileges. Recreation could be one use.

Returns to the questionnaire have not yet been received from Texas, Kansas, Washington, Hawaii, New Mexico or Utah. However, other sources show that the State of Washington provides for the multiple use of State Trust land. Fifty-five year commercial leases are issued for recreational use. New Mexico sells a blanket lease of all State-owned surface lands to the State Game and Fish Department at  $\frac{1}{2}$ ¢ per acre for provision of recreation.

A summary of questionnaire replies is in the General Appendix.

IV. Further Considerations Concerning the Recreational Development of State Trust Lands - 25 year Recreation lease

As land values continue to go up, and the amount of land - both public and private - open to recreational use steadily dwindles, the State lands represent a source of greatly increased value. Throughout my interviews with ranch, farm, conservation and civic groups in Montana, the widespread recognition of this value became apparent. In all quarters, the desire was expressed that any recreational development of State lands come as a result of a planned program over which the State exercise maximum control. By means of continued capability

studies of the land, with recreational development included as a possible use of the land, the Land Board can determine to what uses each parcel of land can best be placed. Each area should be evaluated on its own merits to utilize the land to its optimum public benefit.

Before a policy of widespread recreational development of the State trust lands is adopted by the Land Board, however, a determination should first be made concerning what are the broad policy objectives of the State lands. Thus, an Organic Lands Act, instituted by the Legislature might set forth guidelines for the State Board of Land Commissioners to determine the best uses of the land. The State should view the income potential of its lands from the concept of the total area. Some recreational parcels might greatly increase income to the trust, while other recreational parcels should perhaps be set aside or opened for free public use. Such policy determinations should be the function of the legislature, with public hearings and grass roots inputs influencing the decision.

If there is to be recreational development of the State land, the possibility of a joint venture with the surface lessee should be considered. If recreationists are recreating on the land anyway, and the area is one of high recreation potential, the individual lessee might be interested in investing in a managed development as a partner. The State should make its qualifications and restrictions so high that an individual would only enter such an agreement if a serious venture was contemplated. There may be opposition of private enterprise, and the lessee might decide to develop facilities on his own land to avoid having the State as an interested third party. But, nevertheless,

alternative recreation uses should be considered by the Land Board.

Several individuals with whom I spoke asserted that if the State is to lease parcels for recreational use to the Fish and Game Department, the State should receive the full value of the land for such a lease. Fish and Game should not have preference in lease procedures and should be held to the requirement of competitive bidding. There was general agreement, however, that leasing for recreational purposes would be of greater benefit than to sell the land for such use. Whether such a lease should be to the Fish and Game Department, to a private developer, as a joint venture with the surface lessee, or whether the State Land Department should develop its own recreation sites with the income to revert for improvements on the land itself or to the general fund, is a source of disagreement. Only a case by case determination to seek out the most beneficial means to develop each site will be adequate.

A twenty-five year lease term was considered an insufficient length of time to allow for full depreciation of the improvements necessary to a commercial recreation development. A twenty-five year term, however, with an option to renew the lease at expiration would alleviate this difficulty. All interviews emphasized the continuing role of the State in such developments. The State must have the power to terminate the lease for good cause and a greater role in the management and control of State lands must be exercised by the State to ensure that recreational use will not have a negative impact on the resource itself or on the adjoining lands.

There is a great potential for experimentation by the Land Board

in the provision for recreational developments of State land. Several possible uses of the resource which were mentioned during my discussions included:

A. The management of certain areas as wetlands or rough country for the purpose of wildlife habitat. The U.S. Department of Agriculture is also urging ranchers to adopt such an approach to provide for recreation. In return for a cut in his lease rate, which could be replaced by a subsidiary lease to the Fish and Game Department or a system of user fees, the rancher could manage some acreage in a manner to improve wildlife habitat. In return for the lowered lease rate, the public would be allowed access to the area by the rancher.

B. Efforts should be made in areas of especially high recreation opportunity in which the State has land holdings to make exchanges to consolidate sufficient acreage to be utilized for Park purposes.

C. If a parcel of State-owned land is near a city, or area of intensive recreational use, the land should be tentatively set aside to allow for joint study by all agencies concerned to determine means of funding the land for use as a recreational development.

D. Commercial developments, such as dude ranches or private campgrounds, may afford potential for the recreational use of State lands.



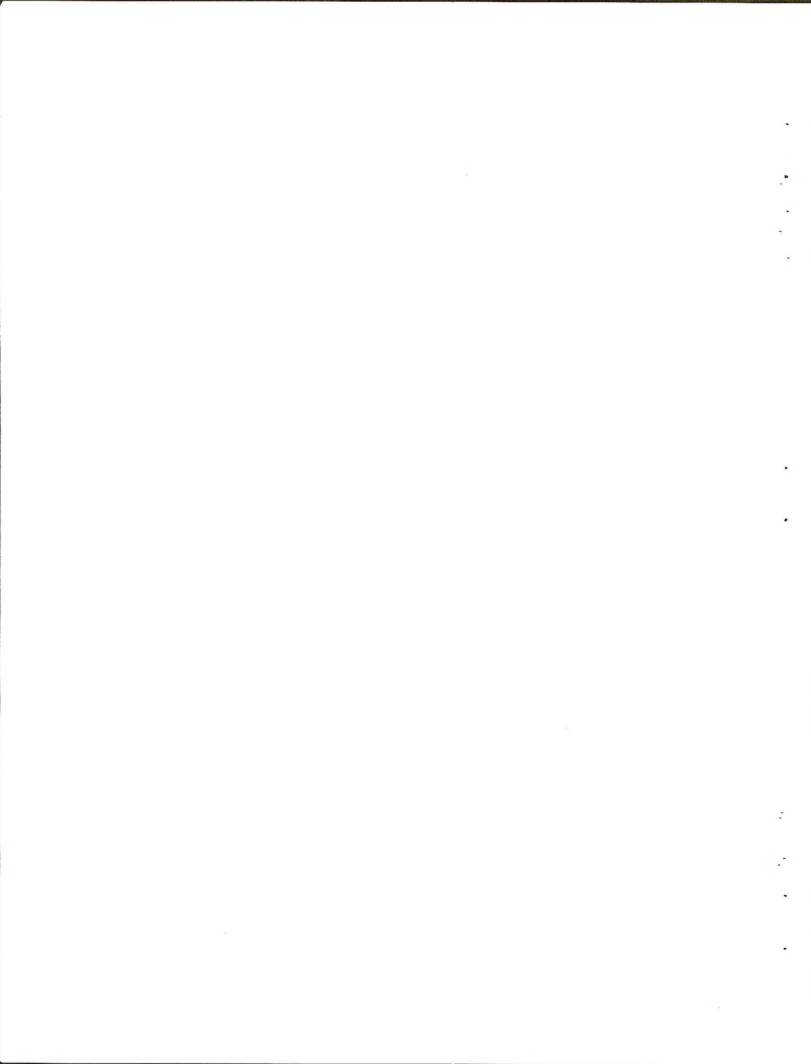
The task of providing for recreation, however, is a difficult one. Each development will have its own eccentricities and special environmental concerns. Thus, each lease should be written individually on a basis of negotiations to secure the greatest public benefit. A re-evaluation of Land Board policy in regards to recreation, however, should be of benefit to the optimum utilization of State lands for all purposes.

Although the trend is toward holding rather than disposal of State-owned lands, if the Land Board should determine that it would be too expensive or otherwise unfeasible to enter the recreation business, the Enabling Act might be amended to allow the State Land Board to sell suitable State-owned land to other governmental agencies for public purposes without public auction. Once the need to have the land for public recreational use has been established to the satisfaction of the Land Commissioner or Land Board, an appraisal of the land would be made. The appraisal value could then be budgeted by the government agency or body concerned and the land would be purchased free from any "reverter" provisions. Though this system would not achieve the highest possible income, the Land Board would receive fair market value. Direct sale to a recreation agency would assure the use of high potential recreation land to the public use and benefit, could allow for centralization of the responsibility for provision of recreation in Montana, and would eliminate higher cost to the taxpayer because of private speculation which would occur if the lands were sold at public auction.

Interview summaries included in the General Appendix at the conclusion of this work contain important comments on State Land recreation development. Each interview summary is important for the reader to obtain a complete picture of the difficulties posed by recreational development on State Trust Land.

Relevant discussion is generally under the headings: "25 year Recreation lease," and "Recreational Development of State Land" in each summary.

APPENDIX TO CHAPTER 2



July 30, 1952

and the

## MONTANA STATE FISH AND GAME COMMISSION

This agreement is formulated in the best interests of the people of Montana that present and future generations may be insured access to the waters of the State for recreational fishing.

It is hereby agreed that the Montana Fish and Game Commission through its Federal Aid in Fishery Program will examine and appraise all tracts of state lands adjacent to lakes and streams in Montana for present land use, for the value of the body of water for recreation, for the importance of the land as public access to the water, and for possible conflict of present land use with the proposed for access, and that the Montana Fish and Game Commission will furnish the Montana State Board of Land Commissioners written reports of these appraisals together with recommendations for preservation of desirable tracts for public access to fishing waters.

It is further agreed that the State Board of Land Commissioners will accept the appraisals of the Montana Fish and Game Commission, will review them, and where consistent with the best interest of the people of Montana and with Sections 81-423, 81-903 and 81-907 of the Revised Codes of Montana for 1947, will reserve from sales for a period of ninety-nine (99) years such lands as are deemed valuable for public access to waters for recreational fishing and will further formulate and enforce regulations for leased lands whereby public access to fishing waters will be insured.

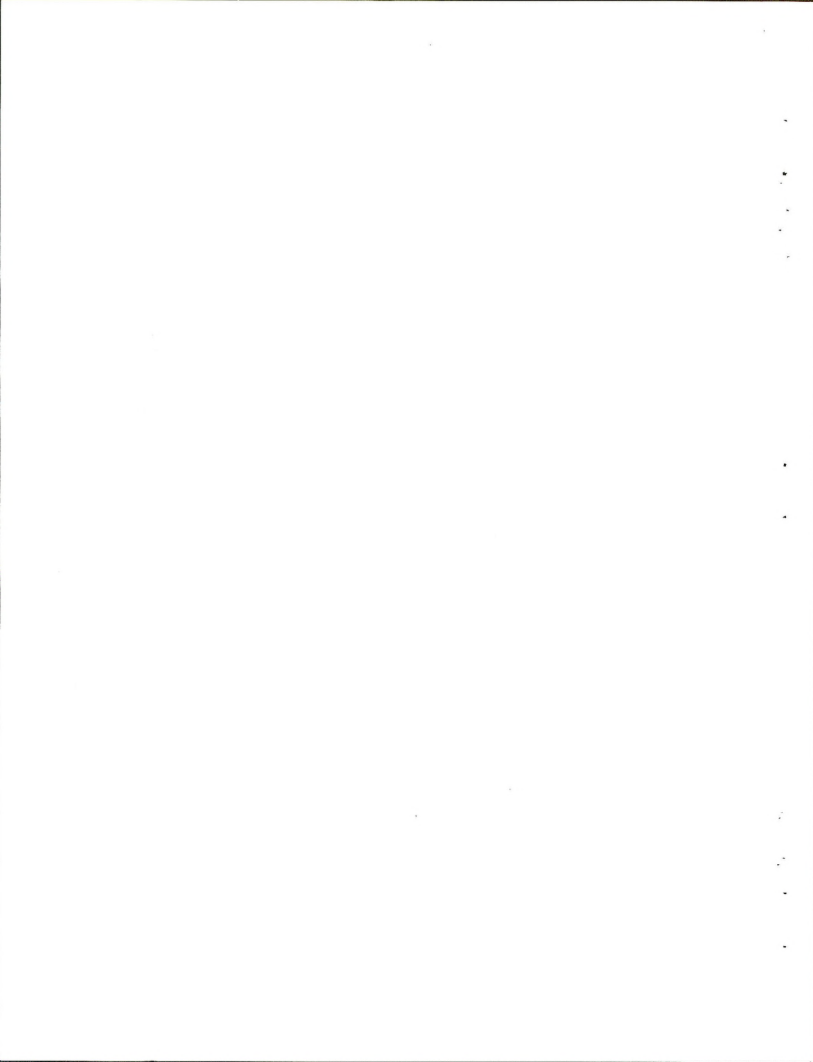
This agreement will become effective when and if the proposed project of the Montana Fish and Game Commission is approved by the Federal Aid Division of the U. S. Fish and Wildlife Service and shall remain in effect for a period of ninety-nine (99) years.

MONTANA STATE BOARD OF LAND COMMISSIONERS

BY W. P. Pilgeram

MONTANA STATE FISH AND GAME COMMISSION

BY Ed M. Boyes



State of Montana  
Office of The Attorney General  
Helena

August 12, 1957

FORREST H. ANDERSON  
ATTORNEY GENERAL

RECEIVED  
AUG 13 1957

Mr. Lou E. Bretzke  
State Lands and Investments  
Helena, Montana

STATE OF MONTANA  
Department of  
State Lands & Investments

Dear Mr. Bretzke:

You ask me whether the State Land Board can enter into a 99 year agreement with the Fish and Game Commission not to sell such state lands as are deemed valuable for public access to waters for recreational fishing.

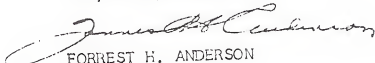
I believe such an agreement invalid for these reasons.

1. The Land Board is charged by law to act as trustees in the administration of school lands. An agreement for 99 years would disable the Land Board from exercising a trustee's discretion and judgment when particular facts might arise requiring it. The term is unreasonable.

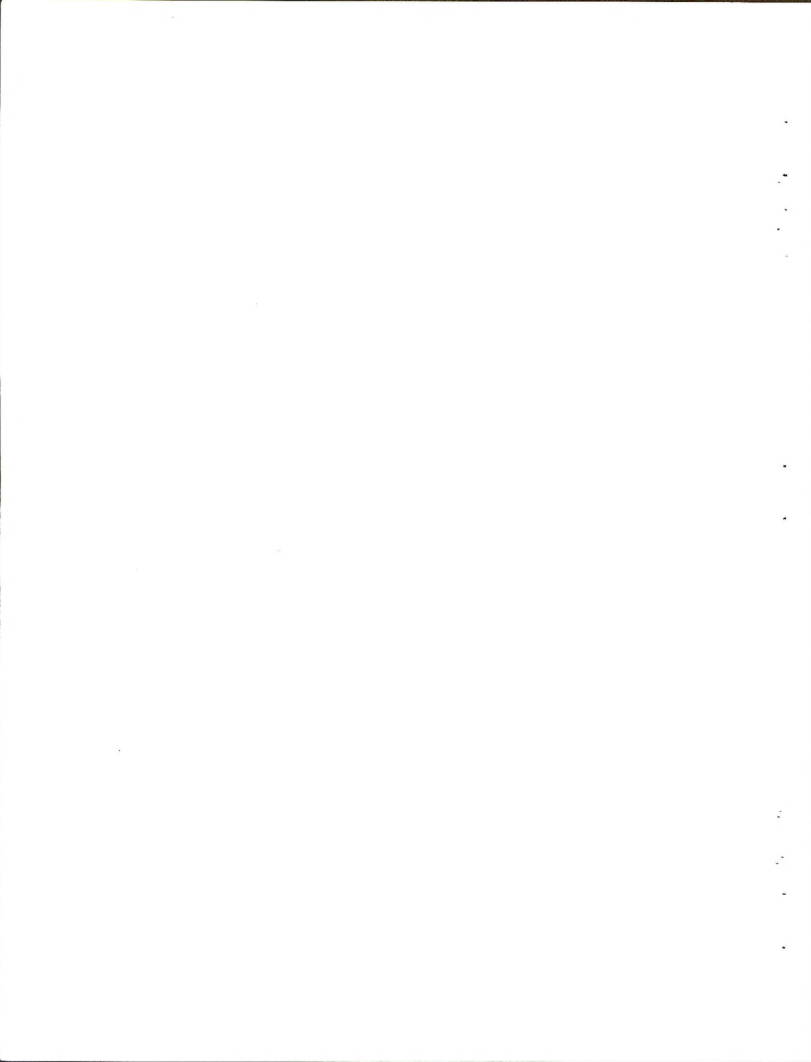
2. The law requires that full market value be received for any interest in school lands disposed of. This agreement would grant interests in land with no provision for payment.

Although the Land Board can not enter into an agreement of this type it could by resolution achieve some of the results of such an agreement. Such a resolution of course could be revoked by it or future Land Boards.

Very truly yours,

  
FORREST H. ANDERSON  
Attorney General

FHA:js





81-302. (1805.57) Easements for school sites and grounds and other public uses. The state board of land commissioners is hereby authorized and empowered to grant easements in state lands for schoolhouse sites and grounds, for public parks, community buildings, cemeteries and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of such properties.

History: En. Sec. 57, Ch. 60, L. 1927;  
amd. Sec. 6, Ch. 257, L. 1965.

81-1103. Donations of land for forestry purposes. That the state board of land commissioners is hereby authorized to accept gifts, donations or contributions of land suitable for forestry or park purposes, and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the state board of land commissioners are desirable for state forests.

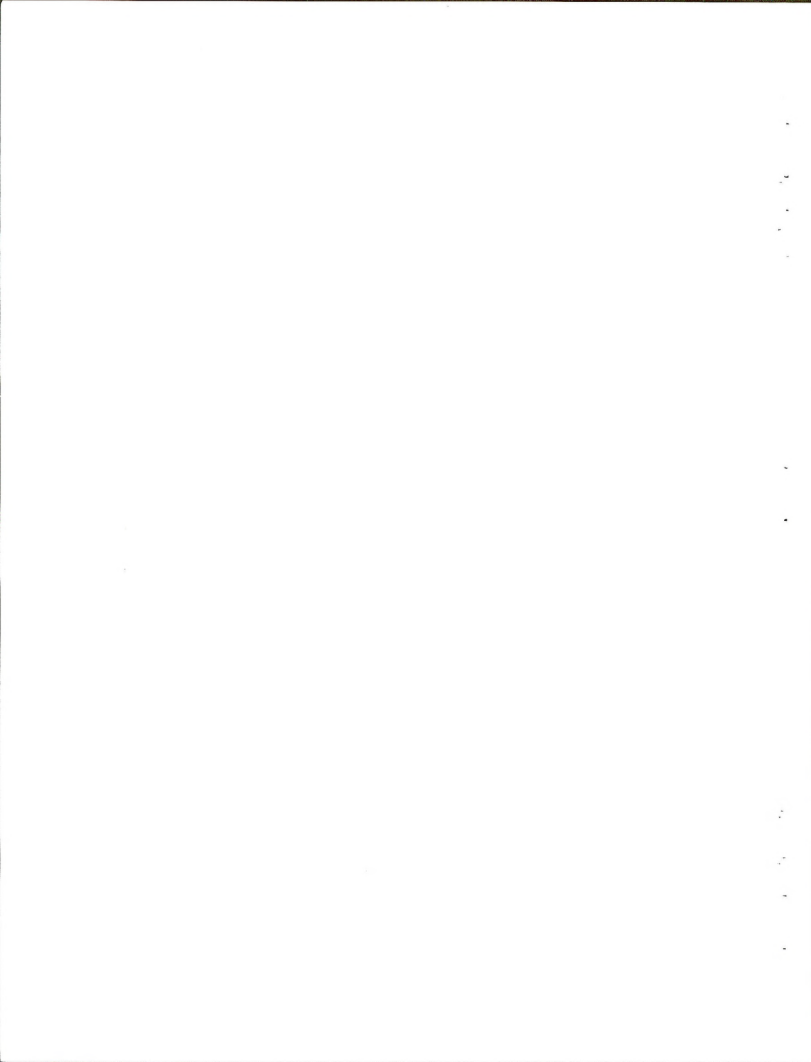
History: En. Sec. 1, Ch. 159, L. 1937.

Collateral References  
States ~~C~~ 85.  
81 C.J.S. States § 104.

62-312. (1842.1) State parks and recreational and camping grounds. The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation or demise, to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this act shall be given an appropriate name by the state board of land commissioners.

81-423. (1805.37) Leasing regulations. The state board of land commissioners shall have the power, and it is hereby made its duty, to formulate and prescribe such additional rules and regulations relating to the leasing of state lands, not inconsistent with the provisions of this act, as it may from time to time deem necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they have been granted to the state of Montana.

History: En. Sec. 37, Ch. 80, L. 1927.



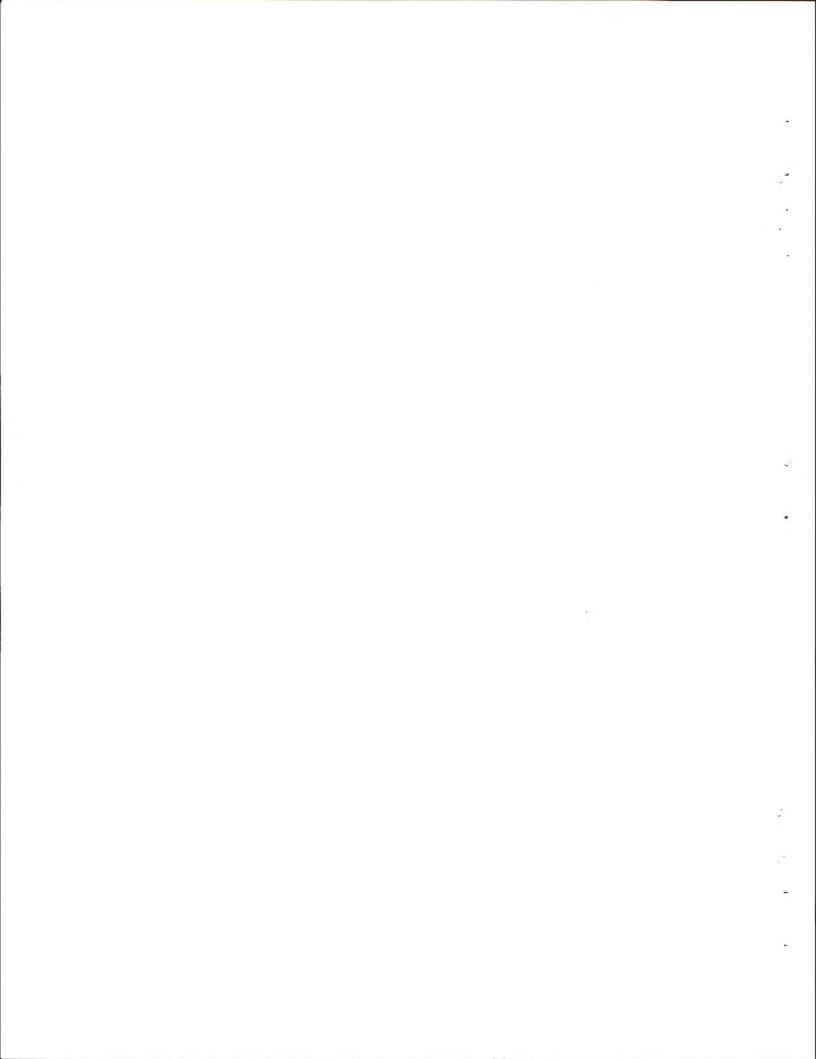
## ENABLING ACT

§11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased lands, interest on deferred payments on lands sold, interest on funds arising



## ENABLING ACT

from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE.—This section given as last amended by an act of congress, April 19, 1948, Ch. 183, 62 Stat. at L. 170. This amendment was accepted by the state of Montana by Chapter 18, Laws of 1949 (83-502).

### Act Not Objectionable As Against This Provision

Treating section 81-1702, authorizing the state land board to enter into pooling agreements relative to state lands for the extraction of natural gas, not as a lease but as a sale of an estate or interest therein, the limitation of this section that such lands cannot be sold except at public sale after advertising, has application only where the land as a whole is sold, not where merely an interest or estate therein such as the gas or oil therein, is disposed of. *Toomey v. State Board of Land Commrs.*, 106 M 547, 559, 81 P 2d 407.

### Disposition of School Land Grant Funds

Section 12, Article XI of the state constitution providing that funds of state institutions of learning shall be devoted to "maintenance" and "perpetuation" of respective institutions, and sections 11, 14 and 17 of the enabling act, held not to prohibit use for erection of normal school buildings of income from land grant for state normal schools, nor limit such use to payment of ordinary operating expenses. *State ex rel. Blume v. State Board of Education of Montana*, 97 M 371, 34 P 2d 515.

### Does Not Prohibit United States from Condemning School Lands for Public Works

The Montana enabling act, prohibiting the state from disposing of school lands except at public sale after advertising, does not prohibit the United States from condemning school lands in connection with construction of project in program of public works (National Industrial Recovery Act Secs. 202, 203(a), 40 U.S.C.A. Secs. 402, 403(a)). *United States v. State of Montana*, 134 F 2d 194, 196.

### Farm Loan Act Not in Conflict

The "primary" plan of the farm loan act, providing for investment by state

board of land commissioners of state funds in farm mortgages, does not conflict with this section of enabling act. *State v. Stewart*, 53 M 18, 21, 161 P 309.

### Oil and Gas Leases

The amount bid over the minimum of 75 cents per acre as established in section 81-1703 is considered part of the rental and thus placed in the common school interest and income fund to be apportioned and distributed annually to the several school districts in the state as provided in section 5, article XI of the constitution of Montana. *State ex rel. Dickgraber v. Sheridan*, 126 M 447, 254 P 2d 390. (See, however, dissenting opinions of Justices Anderson and Angstrom in 126 M 447, 254 P 2d 390 on pages 397 and 403 respectively.)

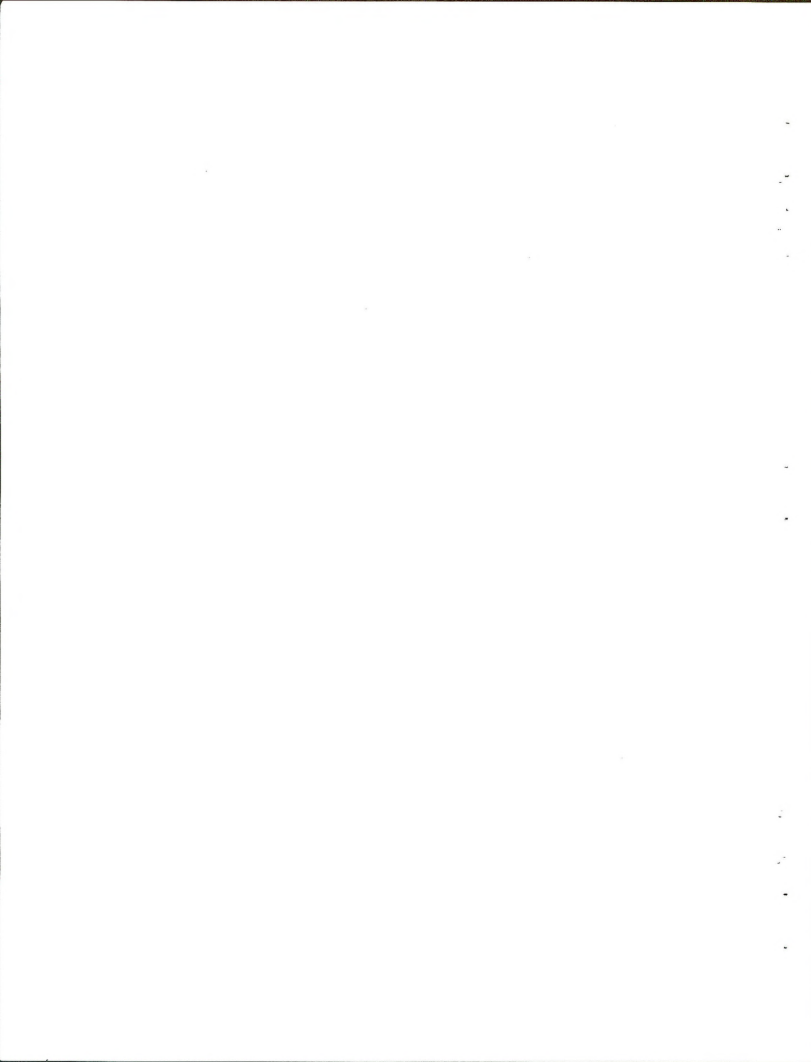
The 1953 amendment of section 81-1702 by chapter 122, Laws of 1953 is not inconsistent with federal law. *State ex rel. Johnson v. State Board of Land Commrs.*, 348 U S 961, 99 L Ed 750, 75 S Ct 524, reversing and remanding *State ex rel. Jones v. State Board of Land Commrs.*, 128 M 462, 279 P 2d 393, which had held that oil and gas leases issued under section 81-1702 as amended in 1953 for 20 years and "as long thereafter as oil and gas in paying quantities shall be produced" were not for a term of years and hence violative of section 11 of the enabling act.

### Operation and Effect

The enabling act restrictions apply to mineral rights on state lands. A lease of the mineral rights by the state for a period of 5 years, made in 1925, with options to renew, cannot run in total more than 20 years, since congress in 1921 amended section 11 of the enabling act by the act of Aug. 11, 1921, 42 Stat. 158 which limited such leases to 20 years and the amendment was accepted by Montana in 1927 by Laws of 1927, chapter 108 (81-1701 et seq.). *Texas Pacific Coal & Oil Co. v. State*, 125 M 258, 234 P 2d 452, 453.

### References

*State ex rel. Wilson v. State Board of Education*, 102 M 165, 174, 56 P 2d 1079;



§1-103. (1805.3) Powers and duties of state board of land commissioners. The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. It is the duty of the board to manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

History: En. Sec. 3, Ch. 60, L. 1927;  
am. Sec. 1, Ch. 113, L. 1969.

#### Amendments

The 1969 amendment inserted the third sentence providing for management of state-owned lands under the multiple-use concept.

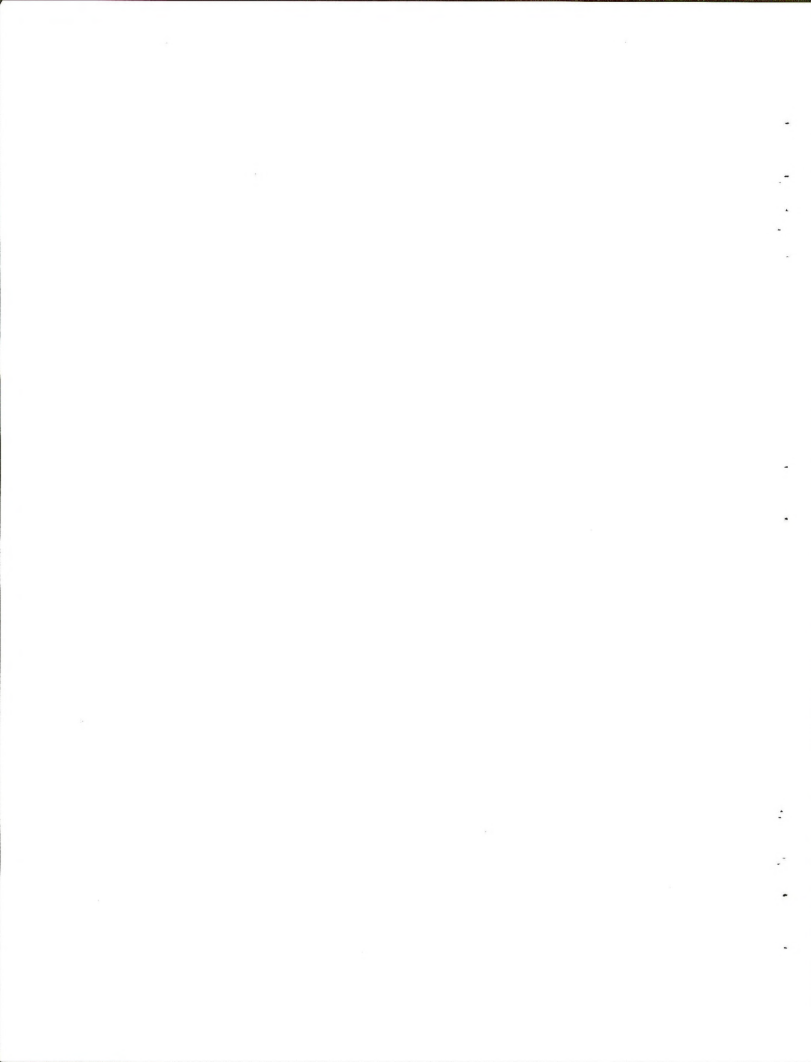
#### Cross-References

Board functions retained after reorganization, sec. 82A-1505(3).

#### Leasing State-owned Land

State board of land commissioners had discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, 147 M 46, 409 F 2d 808.

§1-407. (1805.23) Who may lease—how much and for what length of time. No persons shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of nineteen (19) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section. Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands shall be for a period other than five (5) or ten (10) years. Leases for city and town lots shall not exceed five (5) years. When a lease expires or is canceled the commissioner shall immediately so notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide.





## CHAPTER 3

### Cabin Site Leasing on State Trust Land

#### I. Past Land Board Actions Regarding Cabin Sites

On May 14, 1958, the Land Board approved the State Forester's request for a lease of cabin sites on the Roger's Lake Recreation Area. The plan included 24 homesites - 28 applications had already been received by the Forester's office - and rent was fixed at \$25 per lot even though the the lots varied in size from .47 acres - 1.55 acre. All were situated on the lake front with good access already developed.

The Forester asserted that such a lease would increase income to the State without appreciably interfering with income from grazing or forest products on the parcel. Objections to the plan were raised by the Fish and Game Department, which made use of the lake as a grayling sanctuary. The Land Board then moved that appropriate sanctions limiting fishing to ensure the grayling spawning grounds be included in the terms of the lease (Appendix, 1). Cabin sites were also approved on Seely and Elbow Lakes at \$25 per lot.

At the present time, the State Forester's office is less than satisfied with the commitment which has been made in regards to cabin site leasing. The license fee, in general, is too low to ensure adequate management of the area and the license issued is not of sufficient duration to enable the licensee to secure financing for needed improvements.

An example of the cabin site lease used by the State Forester and the rules and regulations for cabins are included in Appendix 2,3,4.

II. Activities of Other States Concerning Cabin Site Leasing.  
(Responses to questionnaires mailed to other states)

Arizona, Nebraska, Nevada, North Dakota and South Dakota have no cabin site leases.

Colorado considered a policy of cabin leasing but determined that it would be too costly in terms of management.

Alaska has 2346 active cabin leases and has derived an income from such leasing to date of \$152,746. No significant problems have been encountered as a result of such leasing.

Idaho leases 606 cabin sites with a return of \$65,687.11 for fiscal year 1972. There have been few problems and Idaho considers this a viable means to produce income. Their rental rates are \$125 for a Class I - water front lot, Class II - \$96, Class III - \$62. The lease used by Idaho is in Appendix 5,6.

California leases over 100 cabin sites at a minimum rental of \$65. The Land Department, however, remarks that this has not been a good means to generate revenue due to the great amount of lease service necessary (assignment, amendment, collection and policing).

Wyoming has 23 sites under lease at a rental varying between \$50 and \$320. Wyoming states that although the initial investment is high, this form of leasing appears to have a high return. Special leasing conditions for cabin sites in Wyoming are in Appendix 7,8.

Oregon has the possibility of further cabin site leasing under active consideration although only twelve to twenty sites are leased at this time.

No returns were received from questionnaires sent to Washington, New Mexico, Hawaii, Oklahoma, Kansas or Texas.

The Montana Department of State Lands has only one cabin site leased. The lease form is in Appendix 9, 10.

### III. Problems and Factors which are Considerations of Cabin Sites.

The following difficulties are areas of concern regarding cabin leasing in Montana. Some of the items were mentioned by Earl Salmonsens, State Forester's Office and Frank Blackner, U.S. Forest Service, in Missoula as well as personnel from the Bureau of Reclamation in Billings. Although the Bureau of Reclamation does not lease cabins directly, the Bureau does turn over some of its lands to the Montana Fish and Game Department for the purposes of administration of such sites.

A. The U.S. Forest Service will lease no more cabin sites, and some summer home leases already in existence are being cancelled.

1. Cabin site leasing is great for the lessee, but it puts burden on other parts of the resource at the public expense.

- a. Always consider the capacity of the resource to support various forms of recreation activity.

- b. Is this land which will be kept from public use unless income can be generated?
  - c. Will provision be made for public access to the resource? And is the development of cabin sites a viable means to this end?
  - d. The U.S. Bureau of Reclamation envisions income as a long-term turn-over. Revenue is invested back on the area for needed improvements.
2. Cabin sites have historically been given on the best plots of land. Homes occupy sites which could have been used for the benefit of many more people.
- a. If the cabin is on a lake or river, the site should be well back from the water resource,  $\frac{1}{2}$  mile from lake, 200 yards from river or stream. This would help eliminate public rancor at visible cabins as well as being of assistance in pollution abatement.
  - b. If the lake or stream is well suited as a day-use area, the cabins should not conflict with such use if situated at a distance from the resource.
  - c. No lawns or fences should be permitted. Fertilizer run-off from lawns pollutes the waters and both lawns and fences represent barriers to public use of the area.
  - d. If no access is available, access roads should be built and maintained by the cabin lessees with some State assistance. This would then be open for public use.
  - e. In some areas road access might not be permitted to the cabin itself because of the environmental impact.
3. Conflicts may occur when cabin sites adjoin public campground or picnic area. The Forest Service, however, has not had much complaint from cabin lessees.
- a. The cabins nearest to the public use area are appraised at a lower figure.
  - b. Termination potential of lease is known to the lessee. The Forest Service makes it clear that the public

must not be denied access to recreational resources. Also, it is known among lessees that the Forest Service wants to get out of the cabin business.

- c. There should be a buffer ground between the two developments. This provides room for expansion as well as overflow.
4. Cabin sites represent a long-term committment of resources. It is almost impossible to reverse a precedent. What if public needs and demands change?
5. A committment to cabin sites puts limits on other uses of the resource. Timber cutting, mining or grazing in the area will bring protests from the lessee.

#### B. Lease proceedures

##### 1. The lease must be long-term.

- a. The Forest Service grants a special use permit for a period of 20 years with an automatic ten year extension if the terms of permit are met.
- b. The State Forestor grants a five year license for cabin sites. Loan agencies and banks, however, won't lend money for improvements because of the short term of the lease.
- c. The lease should be for 25 years with provision for examination and reappraisal at the end of each five year period. Provision for immediate termination if problems arise should be included.
  - (1) Unless the State has adequate manpower to manage the development, however, the lessee will probably do what he wants to do.
  - (2) What if, at the end of ten years, it is determined that the resource is being affected adversely through no fault of the lessee, or that another use would be more advantageous to the State?

##### 2. Problems with setting lease rates.

- a. The State Forester's office asserts that the rates for cabins are too low, but a rate increase (1) might discriminate against local residents who might be unable to pay the extra charge. (2) will bring on numerous appeals to the Land Board.

- b. The U.S. Forest Service charges 5% of the appraised value of the land. This rate could be higher but the leases are subject to termination and cabins cannot be sublet commercially.
- c. Rates should be discounted if access is not good, or if the cabin is set back to allow for public access to the water.

#### C. Environmental concerns

- 1. An environmental impact study should be completed on each proposed development.
- 2. How much control over building, etc., will the Land Department exercise?
  - a. The Forest Service has built the access to cabin sites, laid out lots, then takes on strict zoning control: timber cutting, distance from the lake, each other, color of cabin, design.
  - b. If there is no good county zoning, the cabins might not be built to any certain standard if strict management controls are not taken.
- 3. Each area should be a planned development, with an independent system of sewage, water etc.
  - a. The State Forester's office informally recommends that the State shouldn't lease on a total area of less than two acres on a lake. Buildings should be no closer together than 50 feet with a minimum of 125 frontage feet.
  - b. Otherwise, lease should not be less than an acre.
  - c. Never have isolated cabins.
- 4. The soil type and water table at each site should be taken into account to determine the type of sewage system which is needed.
  - a. Montana laws do not require change in sewage systems which are already installed even if new sewage regulations are established by the state. This is only required on new improvements. Therefore, the right of the State to require lessee to change sewage system must be incorporated in the lease.

- b. Various health measures might be specified depending on the nature of the resource affected.
  - c. Sewage and water should comply with State Board of Health regulations, but it will be up to the State to ensure compliance.
  - d. All sanitary regulations should be approved by the County.
5. Always consider: access road, snow removal, refuse disposal, sanitation facilities, how the power and phone lines will come in.

D. Other considerations:

- 1. The cost of administration: the Forest Service estimates that about 10% of cabin sites change hands every year. Thus, they charge; a. Transfer fee - \$25 b. Late payment charge - \$15.
- 2. The rate system should be such that a wide range of Montana citizens have the opportunity to lease sites, yet the development must produce income to the trust.
- 3. There must be some policing by the State to ensure that its rules and regulations are met.
- 4. It must be clear to the lessee that his cabin site is a privilege, not a right. Feelings of elitism and ownership may be a problem if public needs change. The State's power to terminate the lease must be known.

E. Possible alternatives to cabin site leasing.

- 1. Camp-site leasing.
- 2. Shelters, or unsophisticated cabins, to be leased for weekend, week or two week use, group picnic areas.
- 3. Cabin site leasing in conjunction with a major park development, or a concessionaire. This would ensure control at all times and might lower recreation expense to day users.

IV. Summary of State-wide interviews concerning Cabin-site leasing by the State Land Department.

The opinions of the individuals with whom I discussed the subject of cabin leasing can be divided into three general groupings.

1. Those who believe that cabin leasing would be a legitimate use of State Trust lands, increasing revenue without detracting from the resource.
2. Those of the opinion that cabin sites may constitute a nuisance, but would probably not pose so many problems as public campgrounds or other recreation developments.
3. Individuals who oppose cabin leasing.

The major thread, however, which was common to all interviews was the requirement that the State enter into no developments without extremely careful planning. The impact on the resource, problems of management, access and provision within the area for public use were the most commonly cited areas of concern. Another important consideration is a desire that the State should maintain a maximum amount of control over these developments. To lease areas to franchise developers would restrict this control and should probably be avoided. Cabin site developments should be either:

1. A joint venture with the surface lessee in which the lessee could retain the use of the State land in order to receive an actual return on his investment.
2. A state-controlled development to be managed by a supervisor hired by the State in conjunction with a cooperative organization of the cabin lessees.



Further difficulties may be encountered by the State in order to open the possibility to lease cabins to a wider range of Montanans than to mostly wealthy individuals. Because of the high initial building cost, the State might assist in mortgage procedures. The State might also hold open drawings for available lease sites at an established minimum rental. The legal requirement of competitive bidding on state leases restricts this possibility.

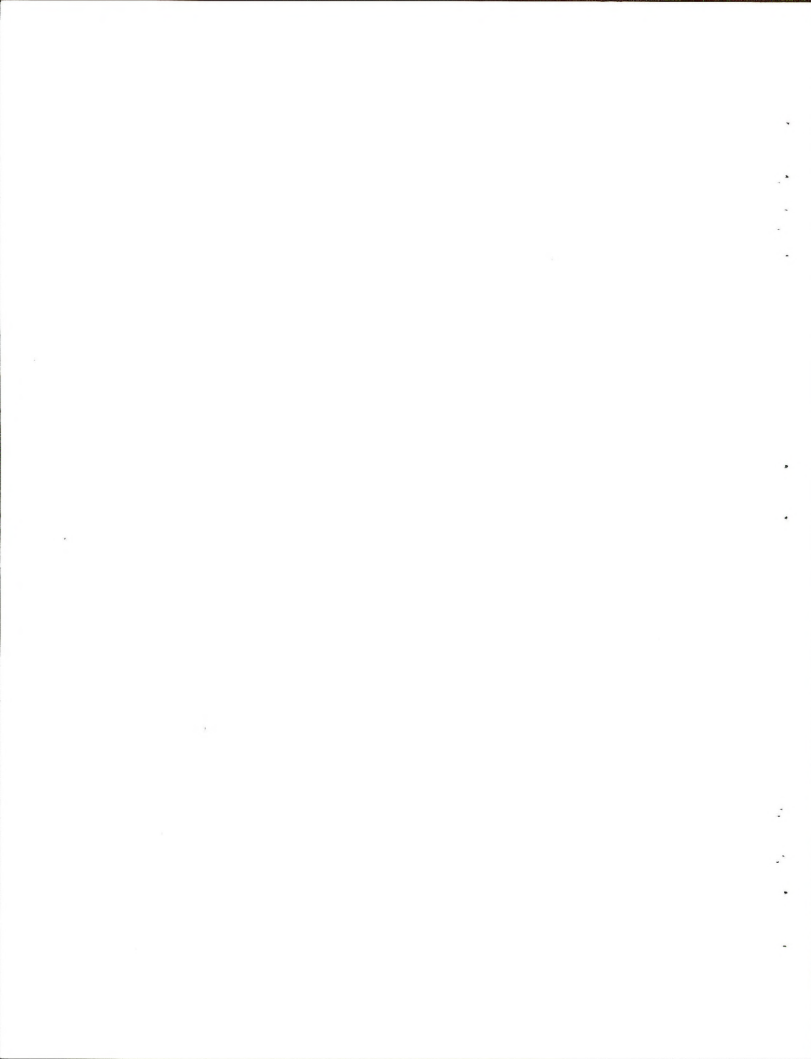
A feasibility impact study should be completed prior to any cabin development in order to minimize any negative environmental impact, and there must be provision for public use of the area correlative with such development. It is also possible that there may be spill over to adjoining private or leased lands which will lower the value of this land to agriculture. This effect must be considered.

Cabin site development, however, is a restrictive use which will not permit full public use of a tract of public land. It is for this reason that the Forest Service is no longer issuing cabin permits and most opposition to State cabin leasing is raised on this account. Even if all environmental concerns are met and all the accoutrements of exclusive use are eliminated - lawns, fences and situation on the primary recreation resource itself - a cabin still represents a psychological barrier to free public use of the area. Cabins are an invitation to vandalism and the proliferation of all terrain vehicles increases policing burdens to the State. However, these concerns should be balanced with the probability that an efficient system of cabin leasing should increase revenue to the trust as well as open up new areas of State Trust Land to public recreation. If an extension of

public use and increased revenue, however, are not forthcoming from such a development, the State should not enter the cabin business.

All of the interview summations included in the General Appendix are important to this subject. Most of the pertinent comments are included under the general headings of "Cabin Site Leasing" or the "25 Year Recreation Lease" in each summary.

APPENDIX TO CHAPTER 3



28. RENEWAL OF BENKITE MINING LEASE, April 1, 1938, Sec. 36, Twp. 24N, Rce. 4W.  
Mr. Murray moved request for benkite mining lease be approved with the usual royalty of 25¢ for 2,000' and advance royalty of \$100.00. Seconded by Miss Miller. Unanimous.
29. APPLICATION BY J. D. STROMM FOR AN AGATE LEASE OF SECTION 7, Twp. 24N, Rce. 4W  
Mr. Anderson moved item 29 be referred to Attorney General's office. Seconded by Mr. Murray. Unanimous.  
Mr. Murray suggested Commissioner write and notify and demand Mr. Capp on his alertness in keeping gates locked.
30. APPLICATION FOR PLASTER MOUNTING LEASE ON THE STATE, Section 14, Twp. 24N, Rce. 4W  
Mr. Anderson moved School of Mines make inspection and submit report to Board. Seconded by Miss Miller. Unanimous.

Adjourned.

Approved:

*John E. Anderson*  
President

Attested:

*Paul E. Bretzke*  
Secretary

1938 APR 12  
Book 100, 101, 102

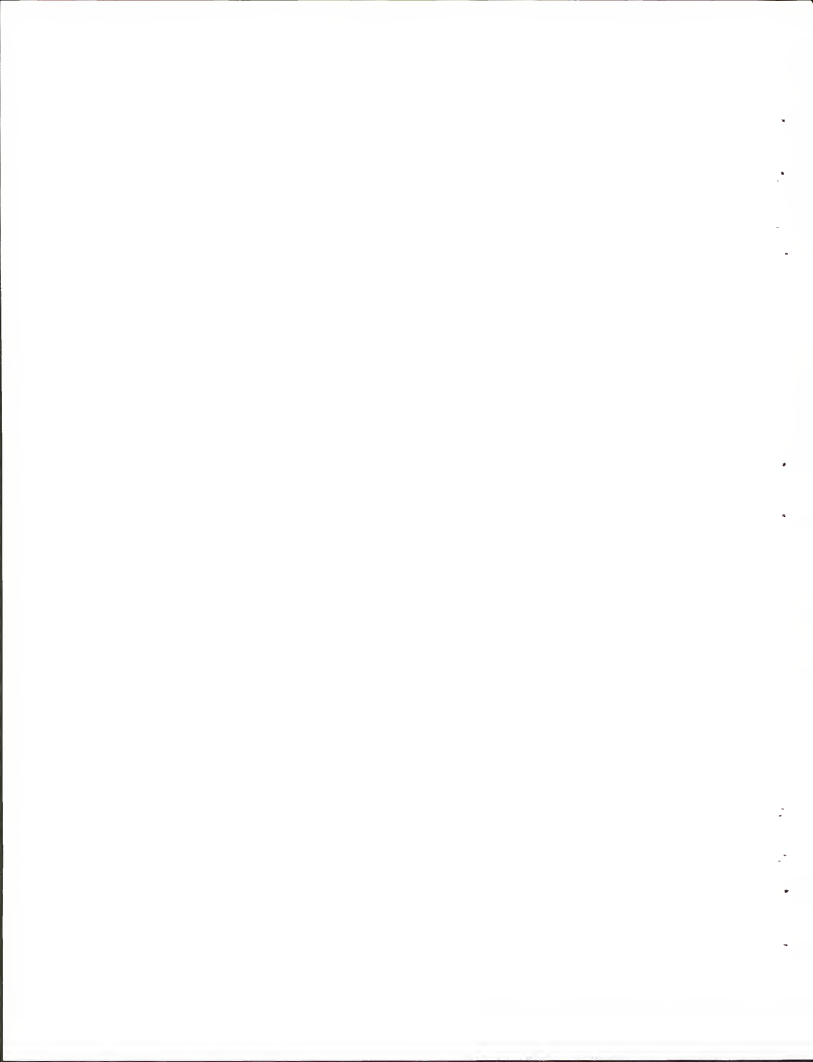
MINUTES  
STATE BOARD OF LAND COMMISSIONERS REGULAR MEETING  
Wednesday, May 14, 1938

PRESENT: Governor J. Hugo Aronson, Attorney General Forrest H. A. Brown, Secretary of State, Frank Murray, Superintendent of Public Instruction Charles E. Miller, and ex-officio Secretary Lou E. Bretzke.

## BUSINESS CONFERENCE

Mr. Anderson moved the minutes of the regular meeting of April 9th be approved as read. Seconded Mr. Murray. Unanimous.

2. EXTENSION OF OIL AND GAS LEASE NO. 993-38
4. RENEWAL OF MINE LEASE FOR A TERM OF LEASE PAID BY MIN FOR LEASE NO. 2644-51 and 2645-51 (Mr. Murray was scheduled to appear before the Board but did not)
6. APPLICATION BY J. D. STROMM FOR AN AGATE LEASE OF SECTION 7, Twp. 24N, Rce. 4W  
Mr. Anderson moved Items 2, 4, 6 be re-referred to Attorney General for consideration, also, in future, items to be referred to Attorney General to be transmitted immediately following meeting and to be accompanied by letter from Land Commissioner. Seconded Mr. Murray. Unanimous.
3. COMMISSIONER OF MINING STATE OF OREGON COUNTY  
Mr. Ross Toole did not appear before the Board as scheduled. Mr. Mack Conklin of Grant Falls presented an assignment from James A. Cave to Larry Gill and Earl Thorne as Co-trustees of Northern Institute of Arts.  
Mr. Anderson moved item 3 be referred to the Attorney General's office to see what can be worked out in connection therewith. Seconded Miss Miller. Unanimous.
12. APPLICATION FOR OIL MINE LEASE, Sec. 36, Twp. 24N, Rce. 4W  
Mr. Bray appeared before the Board and presented some photographs of site.  
Mr. Anderson moved lease with Mr. Bray be approved and that the royalty be fixed at 10¢ per ton. Seconded Miss Miller. Unanimous.
9. FOREVER LAKES RECREATIONAL AREA  
Mr. Orzech C. Moon, State Forester, and Mr. Allen, Fish and Game Department, appeared before the Board to present their views on the creation of said area. Mr. Moon said the State would receive approximately \$1000.00 yearly for leasing cabin sites. Mr. Allen said the Fish and Game Department was primarily interested in keeping this lake as a sanctuary for profling.  
Mr. Anderson moved Mr. Moon be authorized to lease cabin sites on State land in Forever Lake Recreation area, that he be authorized to use whatever language in lease as may be required to further interests of State Fish and Game Department in causing this lake to be a sanctuary for Montana profling. Seconded Mr. Murray. Unanimous.
10. REPORT ON THE PROGRESS OF THE STATE BOARD OF LAND COMMISSIONERS  
Mr. Murray moved that report has been accepted and read. Seconded Mr. Anderson. Unanimous.
11. REPORT ON THE PROGRESS OF THE STATE BOARD OF LAND COMMISSIONERS  
Mr. Anderson moved the following report be read, 1 through 7, of the State Forester be approved (Swan Lake) Seconded Miss Miller. Unanimous.



STATE OF MONTANA

## State Forest Land Use Authorization

OFFICE OF THE STATE FORESTER

No. L-2862This agreement made and entered into this 15th day of August, 1971.

by and between the State of Montana, hereinafter called licensor, and ~~Robert W. Anderson, husband~~  
and wife, as joint tenants and not as tenants in common and to the survivor of said named  
hereinafter called licensee, witnesses: joint tenant and to the heirs and assigns of such survivor.

In consideration of the mutual covenants hereinafter stated, the parties hereto agree as follows:

The licensor hereby grants to the licensee a license to occupy and use, subject to all of the terms and conditions herein-  
after stated, the following described premises:

A one acre lot in SE 1/4 of Section 33, T31N, R22W

The premises will be used by the licensee solely for the purpose of one residence

and for incidental purposes related thereto for a term beginning August 15, 1971, and ending  
February 28, 1976, or until this agreement is terminated as hereinafter provided.

In consideration of the issuance of this agreement the licensee shall pay the licensor Twenty-five and no/100ths

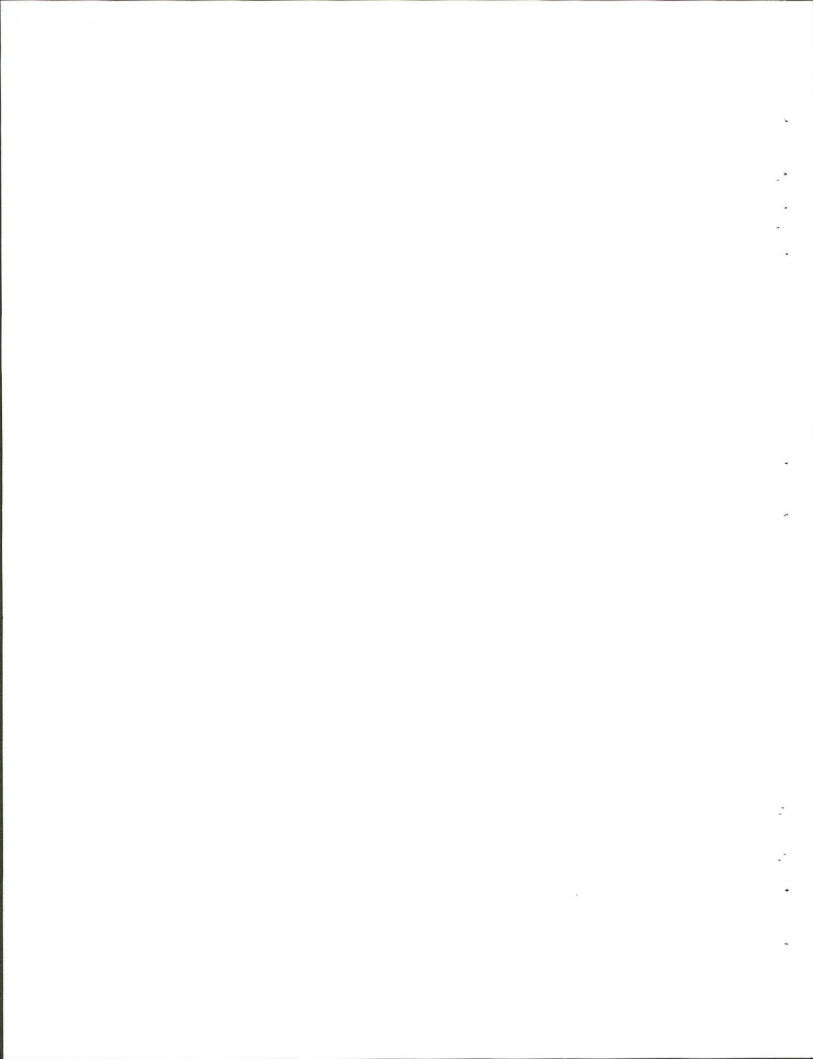
dollars (\$25.00) for the period from the execution of this agreement  
to and including the 28th of February of the next succeeding year. It is further agreed that the rental rate for the remainder  
of the term covered by this agreement shall be that rate established by the State Board of Land Commissioners. Any revision  
of said rate by the State Board of Land Commissioners shall be applicable to this permit for the next succeeding year following  
such revision. The first payment shall be made on the date of execution of this agreement. Subsequent payments under this  
agreement shall be payable annually and in advance. Such payments shall be due and payable on the 15th day of December.  
In the event that any payment due under this agreement is not paid on or before the date required by this agreement, this  
agreement is automatically terminated.

In the event that this license is issued for the purpose of livestock grazing, the licensee agrees that only \_\_\_\_\_  
head of \_\_\_\_\_ will be grazed on these premises for \_\_\_\_\_ months;  
or \_\_\_\_\_ Animal-Unit-Months for a period of \_\_\_\_\_ years from  
date hereof.

The licensee shall pay the grazing fee as set by the Commissioner of State Lands and Investments each year provided that  
no lease issued as a result of competitive bidding shall be subject to this provision, unless the rental set by competitive bid-  
ding is less than the authorized minimum rental.

As further consideration for this agreement the licensee specifically agrees to:

1. Comply with all regulations governing the use of State Forest Land including all State Sanitary Laws and Regula-  
tions applicable to these premises.
2. Take all reasonable precautions to prevent and suppress forest fires.
3. Report immediately to the State Forester any trespassing livestock or timber cutting observed upon these premises.
4. Refrain from cutting or destroying any State Forest Timber or using any of said timber for the construction of im-  
provements unless written permission has first been obtained from the State Forester.





5. Refrain from using any State Property without first obtaining the permission of the State Forester.
6. Peaceably yield possession of these premises upon termination of this license for any cause.

The licensor, as further consideration for this agreement, agrees to:

7. Allow the licensee to construct improvements which will increase the use for which this license was granted; however, the licensee must file plans and specifications for such improvements with and obtain the approval of the State Forester prior to the actual construction of such improvements.

8. Allow the licensee to remove all improvements constructed by him on these premises upon the termination of the agreement, provided that the licensee removes such improvements within sixty days after the termination of the agreement and that such removal will not damage the premises. Upon the failure to remove said improvements within the specified sixty day period, all right, title and interest in such improvements will become vested in the licensor. The licensee shall not remove such improvements without first obtaining the permission of the State Forester and permission will not be granted as long as licensee has failed to make payment of any money due the licensor under any of the terms of this agreement.

9. Allow this license to be transferred by the licensee to any other person after proper application has been made to and the written approval secured from the State Forester. Any attempt to transfer this license without the State Forester's written approval will result in the automatic termination of this agreement.

It is further agreed that:

10. The State Forester has the power to cancel this license for any of the following causes: misrepresentation, fraud, or concealment of facts relating to the issuance of this license where such facts if known would have prevented the issuance of this license; use of the premises for purposes other than those herein authorized; overgrazing or any other misuse or abuse of the premises; or for any other reason which in the judgment of the State Forester is necessary for the protection of the best interests of the licensor. Cancellation of this license for reasons stated in this section will not entitle the licensee to any refund of or exemption in the payment of license fee stated in this agreement.

11. The licensor reserves the right to withdraw all or any part of these premises from grazing if in the opinion of the State Forester the premises are overgrazed and such withdrawal will be in the best interests of the licensor. In the event of such withdrawal grazing fees will be adjusted on the basis of the adjusted carrying capacity of the premises.

12. The licensee shall permit State Forest Officials, Users of State Forest Lands, Purchasers of State Forest Products, free ingress and egress across the premises herein described, when so authorized by the State Forester. The licensor reserves the right to enter upon these premises to prospect for coal, oil, gas and minerals, and to grant permits for other uses not in conflict with this permit.

13. Where this license is granted for the purpose of grazing livestock the licensee agrees that all bedding and salting of livestock shall be at a distance of  $\frac{1}{4}$  mile from streams, lakeshores, and other water, or on divides between drainages when streams are closer together than  $\frac{1}{2}$  mile.

14. The licensee agrees not to use lands under this agreement for the purpose of encroaching on adjacent range lands or in such a manner as to cause overgrazing or soil and range deterioration on adjacent lands.

15. This authorization is subject to cabinsite rules and regulations as approved by the State Board of Land Commissioners. See Attachment.

16. Livestock will not be kept on the area described in this Authorization.

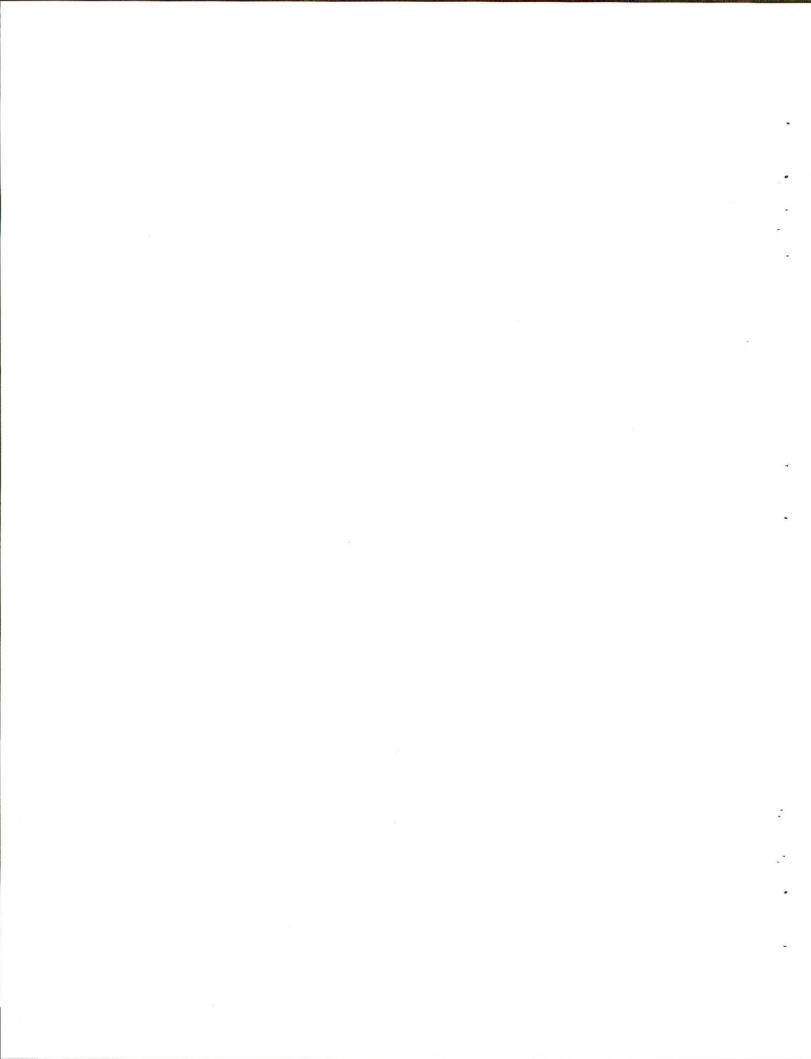
17. The making, execution and delivery of this agreement by the licensee has been induced by no representations, statements, warranties, or agreements other than those herein expressed. This agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof except as maybe hereto attached. This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

IN WITNESS WHEREOF:

*Charles C. Morris*  
Licensor  
State Forester

By *James J. Higgins*  
Chief Forester Northwest Area

*Whitefish Mountain*  
Licensee  
Address *Whitefish Mont. 59937*  
Tel. #23



## CABIN SITE RULES AND REGULATIONS

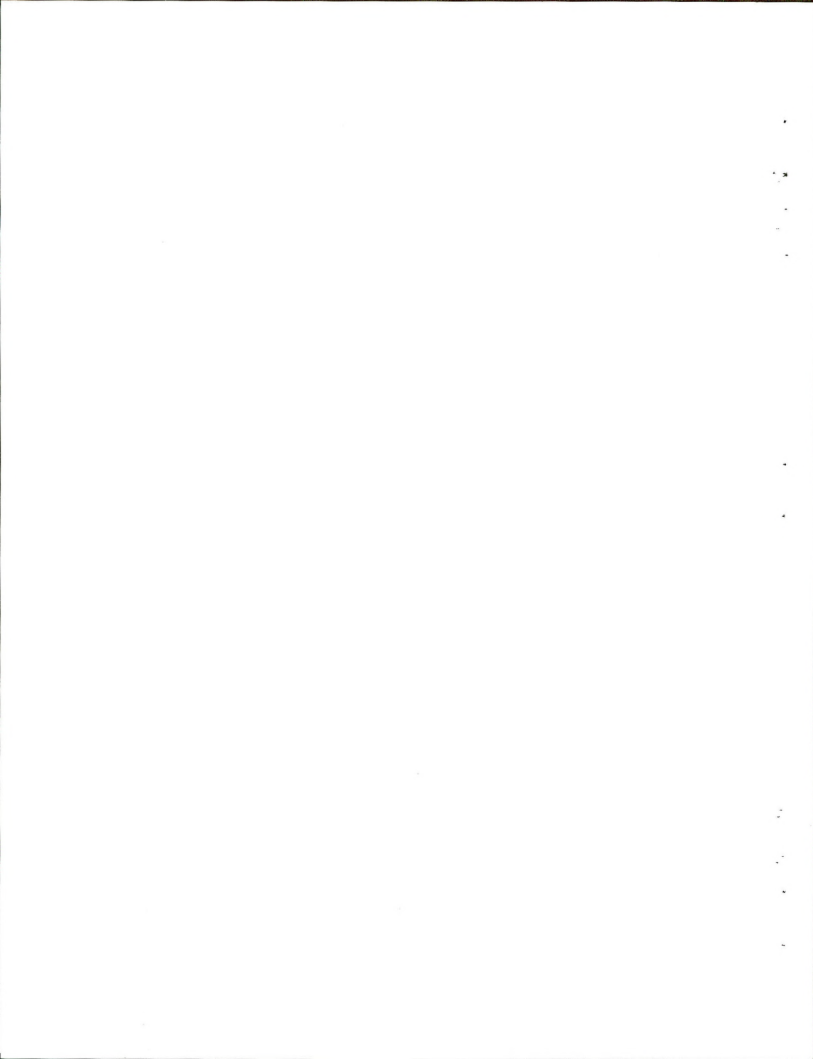
### OFFICE OF STATE FORESTER

The following minimum rules and regulations will be observed on all State lands leased for home or summer cabin sites:

- Rule 1. Area must be kept free of debris, garbage, trash and any other unsightly objects. This includes lake-shores or streams when adjacent to area.
- Rule 2. Area must be kept free of fire hazards.
- Rule 3. Incinerators, fire places, stoves or any other type of burner must be fire proofed by use of spark proof screens. All fires must be extinguished prior to leaving the area.
- Rule 4. The use of fire arms or fire works is not permitted on the area, but such may be kept on the area.
- Rule 5. Felling of live or green trees is prohibited without a permit from State Forester.
- Rule 6. All buildings constructed must have a presentable and pleasing appearance. Tar paper or similar shoddy appearing siding is not permitted.
- Rule 7. Sewage disposal will be done in accordance with regulations issued by the State Health Department.
- Rule 8. Open pits, ditches or other unsafe conditions must be eliminated.
- Rule 9. Any site sub-leased, rented or in any other way used to provide income to lessee must be done with approval in writing by State Forester. Additional cabins, stores or any other use falls in this category. In such instances the annual rate must be adjusted.
- Rule 10. Disturbance of peace of the community will not be tolerated.
- Rule 11. Forest litter (needles, twigs, duff) must be raked up for a distance of ten feet around all buildings for fire protection purposes.
- Rule 12. No buildings except boat docks may be constructed within 100 feet of shoreline on rivers or lakes.
- Rule 13. Only one dwelling will be permitted on each lot.
- Rule 14. Rental for site must be paid one year in advance on or before December 15th of any year.
- Rule 15. These rules must be posted in a conspicuous place on the leased site.

The above rules and regulations were approved by the state Board of Land Commissioners on May 13, 1959.

WARNING: Failure to comply with above rules and regulations may result in termination of lease.



# STATE OF IDAHO COTTAGE SITE LEASE

This agreement of lease, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the State of Idaho, acting by and through its State Board of Land Commissioners, the party of the first part, hereinafter called the lessor, and

\_\_\_\_\_ of \_\_\_\_\_, party or parties of the second part, hereinafter called the lessee, witness:  
That the lessor, for and in consideration of the rental paid or to be paid and the covenants, conditions and restrictions hereinafter set forth and to be observed by the lessee, does hereby lease and demise unto the lessee the exclusive right and privilege to possess and use in the manner and for the purpose hereinafter contained the following lands, lying and situated in the County of \_\_\_\_\_ State of Idaho, being more particularly described as follows, to-wit:

Subdivision

Section

Township

Range D.M.

containing \_\_\_\_\_ acres, together with the right to use and occupy so much of the surface of said lands as may be required for all purposes reasonably incident to said lease, from the date of this lease to the 31st day of December, 19\_\_\_\_, subject, however, to the covenants, conditions and restrictions hereinafter contained.

In consideration of the foregoing the following covenants, restrictions and conditions are hereby agreed to between the lessor and the lessee.

## 1. ANNUAL RENT.

The annual rent hereunder shall be \_\_\_\_\_ per annum. Lessee agrees to pay said amount to Lessor, in advance, on or before the 1st day of January of each year hereunder.

## 2. ANNUAL RENT SUBJECT TO CHANGE.

Notwithstanding the provisions of paragraph 1 hereof, Lessor has the right to raise or lower the annual rent to be paid by Lessee, as of the beginning of any calendar year hereunder, by providing Lessee with thirty (30) days prior written notification of the same.

## 3. USE AND OCCUPATION.

The leased premises shall be used for only recreational residential purposes. In no event shall the leased premises be devoted to any commercial use, nor shall any enterprise of a commercial nature be permitted to exist thereon.

## 4. SUB-LEASING AND ASSIGNMENT.

Lessee shall neither sublease the leased premises nor assign this lease without first having obtained the written consent of Lessor or its authorized agent.

## 5. LANDSCAPING AND REMOVAL OF VEGETATION.

Lessee shall neither landscape the leased premises nor remove vegetation, including trees, therefrom without the prior written consent of Lessor or its authorized agent.

## 6. DOMESTIC WATER.

Lessee shall be entitled to water for domestic purposes only to the extent that natural springs, streams, lakes, existing wells or water systems serving the leased premises are capable of supplying the same. Lessee shall neither drill or use a new water well nor develop and use any new source of water without the prior written consent of Lessor or its authorized agent, plus the prior written consent of any department or agency of the State of Idaho having jurisdiction to regulate water rights in this state. All water rights with respect to the leased premises shall be taken in the name of the State of Idaho. If water is supplied to the leased premises by a water system operated by the State of Idaho, the use of said system and the supply of water provided thereby may be curtailed or terminated upon ten days written notice to Lessee from Lessor or its authorized agent. Neither the Lessor nor its agent and employees nor any entity of the State of Idaho shall be liable in any manner for damage or inconvenience to the Lessee by reason of failure of, damage to, or termination or curtailment of the operation of any water system or source supplying water to the leased premises.

## 7. MAINTENANCE OF PREMISES, SEWAGE, GARBAGE AND LITTER.

Lessee shall keep the premises at all times in a clean and sanitary condition, free of trash, garbage and litter, to the end that the premises shall be maintained in as nearly a natural state as possible. Lessee shall not dispose of sewage except in conformity with the rules and regulations of the Idaho State Board of Land Commissioners and the Idaho State Board of Health, and shall comply with all pertinent state and local sanitation laws and regulations. Lessor may require Lessee to furnish a certificate or other satisfactory proof of compliance with such laws and regulations. Lessee shall not dispose of garbage or trash except in conformity with all pertinent laws and regulations, and at a place designated by Lessor or its authorized agent.

## 8. BURNING PROHIBITED.

Lessee shall not burn material of any type or nature outside of a stove or fireplace within an improvement constructed on the leased premises without the prior written consent of Lessor or its authorized agent.

## 9. CONSTRUCTION AND IMPROVEMENTS.

Without having secured the prior written consent of the Idaho State Board of Land Commissioners, or its authorized agent, plus the prior written consent of any other department or agency of the State of Idaho having jurisdiction under the circumstances, Lessor or his agents, shall not erect any structure or improvement including roads on the leased premises; shall not place any houseboat in the water, if any, adjacent to the leased premises; and, shall not make any excavations, in, fills upon or alterations of any lake or stream bed, if any, adjacent to the leased premises. The cost of such structures, improvements, excavations, fills, or alterations, constructed, placed, erected or caused to come into existence without such prior written consent shall be subject to immediate removal by Lessor or its authorized agent, the cost of such removal or abatement to be charged to Lessee and to remain a debt of Lessee to Lessor until the same is paid. Provided, that the failure of Lessee to remove or abate or to cause removal or abatement of the same shall in no way be deemed a waiver of the Lessor's right to remove or abate the same. As used herein, the term "approved improvements" shall mean such improvements as have been erected with the consent of the Idaho State Board of Land Commissioners and such other agencies or departments of the State of Idaho as are required to give consent hereunder. As used herein, the term "non-approved improvements" shall mean such improvements as have been erected without the consent of the Idaho State Board of Land Commissioners and the consent of such other agencies or departments of the State of Idaho.

## 10. CONSTRUCTION REQUIREMENTS, SETBACKS.

Unless substantial improvements are situated upon the leased premises as of the commencement of this lease, or the construction of substantial improvements is begun within two (2) years from the commencement of this lease and the exterior completed within five (5) years from the commencement of this lease, this lease shall be cancelled by Lessor or its authorized agent and Lessee shall thereupon forfeit all rentals paid hereunder. A substantial improvement shall be deemed to be a foundation, sketched frame, and finished roof built according to a building plan approved by the Lessor or its authorized agent. No building or structure shall be constructed with foundations and outside walls being within fifteen (15) feet of any boundary of the leased premises provided that if the leased premises is a waterfront lot, no building shall be constructed within fifty (50) feet of the waterfront boundary of the premises, the setback requirements with respect to the remaining boundaries to be as is hereinafter provided.

## 11. INSPECTION BY LESSOR.

Lessee shall permit inspection of the leased premises by an authorized agent of the Lessor at any reasonable time.

## 12. INGRESS AND EGRESS.

Lessor reserves the right of ingress and egress for any of its authorized agents across the leased premises for purposes of administration, for providing access to neighboring lots and for any other purpose of the Lessor.

## 13. LESSOR'S RIGHT OF SALE, DISPOSITION OF IMPROVEMENTS.

Lessor reserves the right to sell all or any portion of the leased premises and in the case of sale during the continuance hereof, Lessee hereby covenants to deliver immediate possession of the lands so sold unto the Lessor, or to the \_\_\_\_\_ or party as may be specified in writing by the Lessor or its authorized agent. In the event of such sale, the Lessee shall have the rights provided in Section 88-313, Idaho Code, with respect to approved improvements placed upon the leased premises by the Lessee; provided, that Lessee shall be entitled to compensation with respect to any non-approved improvements made or erected upon the leased premises.



14. TREATMENT OF IMPROVEMENTS UPON NON-RENEWAL BY LESSOR.  
Except as provided in paragraph 16 hereof, should Lessee apply to renew this lease in the manner provided by law and such application be denied, then Lessor shall purchase the approved improvements placed or caused to be placed on the leased premises by Lessee, at the fair market value of such improvements as of the effective date of expiration, or, at Lessor's option, shall require Lessee to remove such approved improvements, and shall pay the actual costs incurred by Lessee in removing the same, not to exceed one-half (1/2) of the fair market value of such improvements as of the effective date of termination or expiration, whichever the case may be.
15. TREATMENT OF APPROVED IMPROVEMENTS UPON NORMAL EXPIRATION WITH NO APPLICATION TO RENEW.  
In the event this lease expires without Lessee having made application to renew, Lessor shall have the right to require Lessee to remove all approved improvements placed or caused to be placed upon the leased premises by the Lessee, and to require Lessee to restore the leased premises to as nearly as is reasonably practical to its natural condition, all at Lessee's sole cost and expense, or, at Lessor's option, to purchase such approved improvements from Lessee at the fair market value of the same as of the date of expiration.
16. TREATMENT OF IMPROVEMENTS IN THE EVENT OF CONFLICT BID.  
In the event the Lessee is not the successful bidder in an effort to renew this lease, and should the leased premises be leased to another, the value of all improvements, approved and non-approved, shall be paid to the Lessee as provided in Section 58-307, Idaho Code.
17. TREATMENT OF NON-APPROVED IMPROVEMENTS UPON EXPIRATION OF THIS LEASE.  
With respect to non-approved improvements which have not been removed, Lessor shall have the right upon expiration of this lease to remove such improvements and charge the cost of such removal to Lessee, the same to remain a debt of Lessee to Lessor until paid; or Lessee may remove such improvements at Lessee's cost and expense; or, to require that such non-approved improvements be removed by Lessee, and the premises and the improvements be created upon the leased premises; provided, that should Lessee be an unsuccessful bidder in an effort to obtain renewal of this lease, he shall be paid the value of all improvements as provided in Section 58-307, Idaho Code.
18. INDEMNITY.  
Lessee hereby indemnifies and holds harmless the Lessor, its departments, agencies and employees, for any and all claims, actions, damages, costs and expenses which may arise by reason of Lessee's occupation of the leased premises, or the occupation of the leased premises by any of Lessee's agents or by any person occupying the same with the Lessee's permission, and hereby agrees to defend Lessor against any such claim or action.
19. FORFEITURE FOR CAUSE.  
Any breach of the terms of this lease to be kept by Lessee, or any breach by Lessee of any rule or regulation now in force or hereinafter adopted by the Idaho State Board of Land Commissioners may subject this lease to cancellation at the option of Lessor. Notification of cancellation shall be in writing and shall be provided to the Lessee no later than thirty (30) days prior to the effective date of such cancellation.
20. BINDING ON HEIRS.  
It is understood and agreed that all of the terms, covenants and conditions hereof shall be binding upon the heirs, executors and assigns of the Lessee.

IN WITNESS WHEREOF the party of the first part, by and through its State Board of Land Commissioners of the State of Idaho and in accordance with the law has caused these presents to be executed by its President, the Governor of the State of Idaho and the State Land Commissioner and countersigned by the Secretary of State, and the part \_\_\_\_\_ of the second part has caused these presents to be executed in person the day and year herein first above written.

COUNTERSIGNED: STATE BOARD OF LAND COMMISSIONERS OF THE STATE OF IDAHO

By \_\_\_\_\_ President of the State Board of Land Commissioners, and Governor of the State of Idaho.  
Secretary of the State of Idaho: \_\_\_\_\_ Lessee.

State Land Commissioner: \_\_\_\_\_

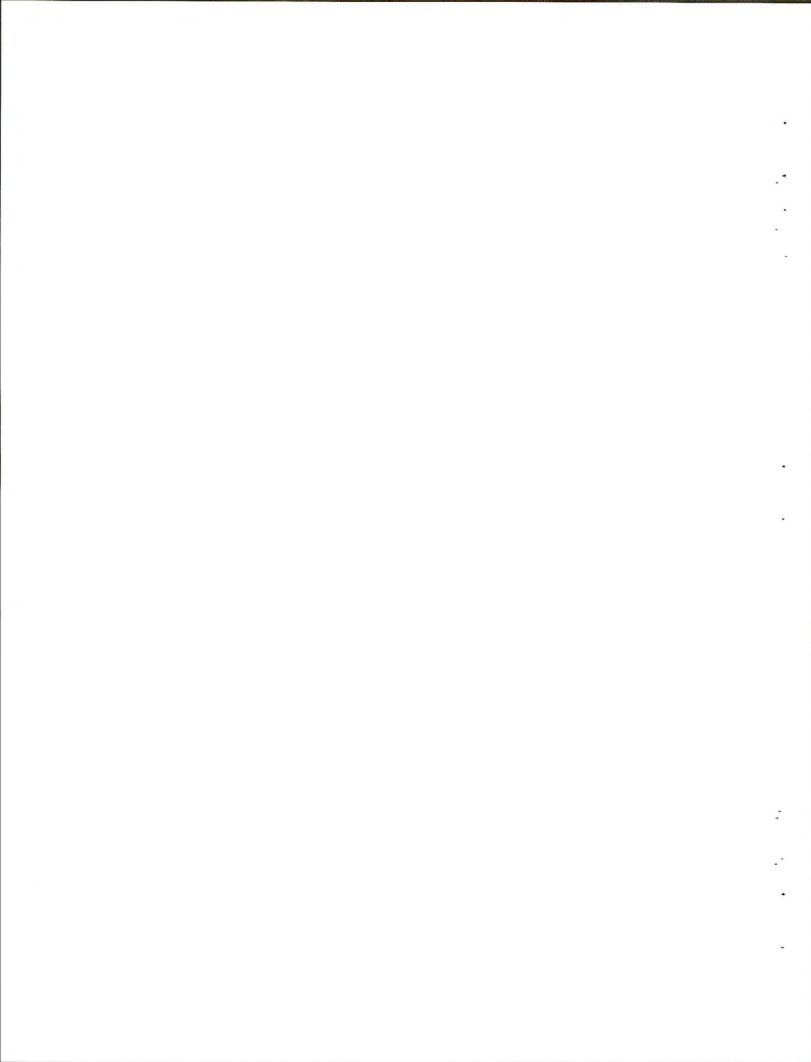
STATE OF IDAHO ) ss.  
County of \_\_\_\_\_  
On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 19\_\_\_\_, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_

known to me to be the lessee that executed the within instrument, and acknowledged to me that \_\_\_\_\_ he executed the same.  
IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

Notary Public for Idaho.  
Residing at \_\_\_\_\_, Idaho.  
STATE OF IDAHO ) ss.  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 19\_\_\_\_, before me, a Notary Public in and for said State, personally appeared Cecil D. Andrus, known to me to be the president of the State Board of Land Commissioners of the State of Idaho, and the Governor of the State of Idaho; and Pete T. Cenarusa, known to me to be the Secretary of the State of Idaho; and G. C. Trombley, known to me to be the State Land Commissioner, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho, and the State of Idaho executed the same.  
IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public for Idaho.  
Residing at \_\_\_\_\_, Idaho.  
Commission expires \_\_\_\_\_





Wyoming

ATTACHMENT FOR  
SUPPLEMENTAL CONDITIONS FOR HOMESITE LEASING

1. The charges for this use may be readjusted from time to time to place this lease on a basis consistent with the charge to other Lessees for like privileges.

2. Construction or occupancy and use under this permit shall begin within \_\_\_\_\_ month(s), and construction, if any, shall be completed within \_\_\_\_\_ months, from the date of the permit. This use shall be actually exercised at least \_\_\_\_\_ days each year, unless otherwise authorized in writing.

3. Development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the Board of Land Commissioners. Trees or shrubbery on the leased area may be removed or destroyed only after the Commissioner of Public Lands has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the Lessee as follows:

Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that, the State Board of Land Commissioners reserves the right to dispose of the merchantable timber to others than the Lessee at no stumpage cost to the Lessee. Trees, shrubs, and other plants may be planted in such a manner and in such places about the premises as may be approved by the Commissioner of Public Lands.

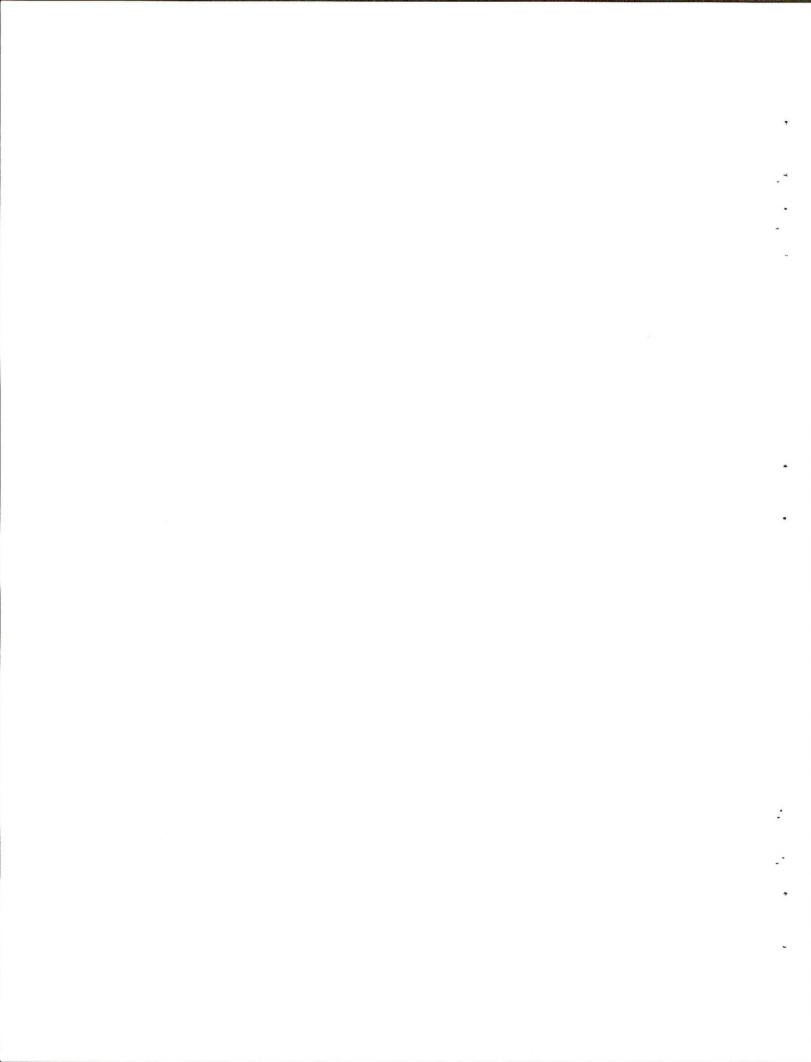
✓ 4. The lessee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the Commissioner of Public Lands.

5. The lease is subject to all valid claims.

✓ 6. The lessee, in exercising the privileges granted by this lease, shall comply with the regulations of the State Board of Land Commissioners and all Federal, State, County, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this lease.

7. The lessee shall take all reasonable precautions to prevent and suppress fires. No material shall be disposed of by burning in open fires during high fire danger periods without a written permit from a Federal, State or County fire warden authorized by the State Board of Land Commissioners.

8. The lessee shall exercise diligence in protecting from damage the land



and property of the State of Wyoming covered by and used in connection with the lease, and shall pay the State for any damage resulting from negligence or from violation of the terms of the lease or of any law or regulation applicable to the State by the lessee, or by any agents or employees of the lessee acting within the scope of their agency or employment.

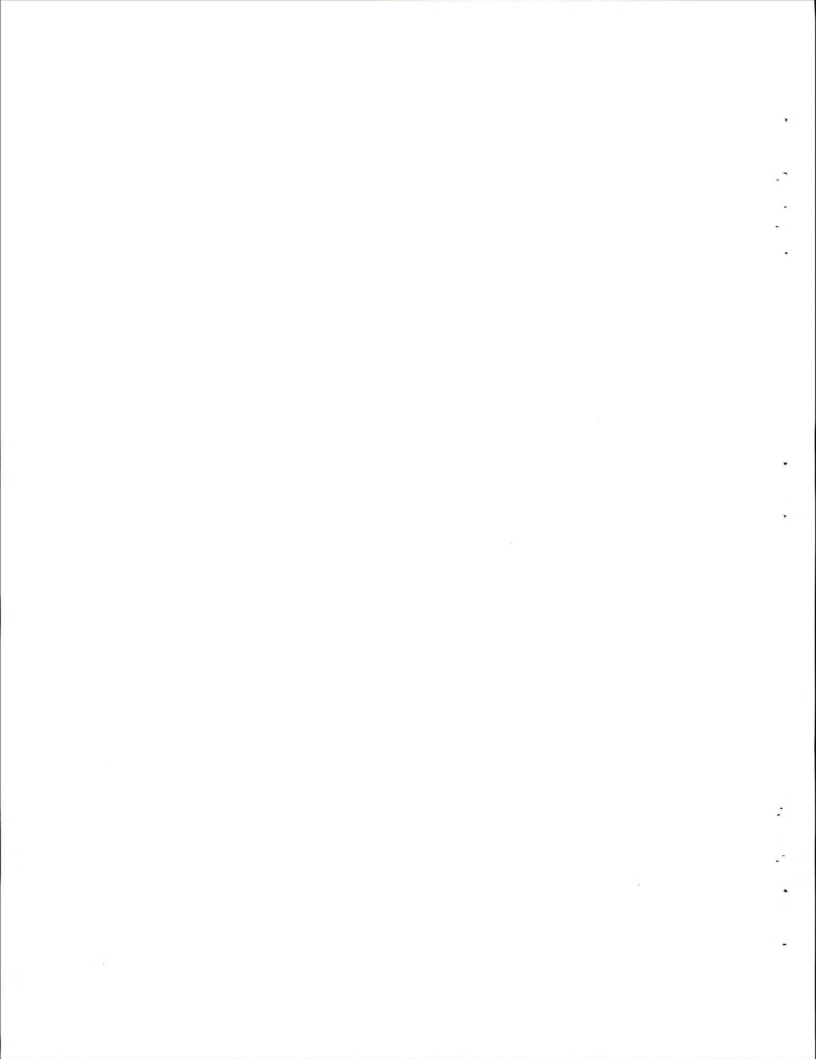
9. The lessee shall fully repair all damage, other than ordinary wear and tear, to State roads and trails caused by the lessee in the exercise of the privilege granted by this lease.

10. Upon abandonment, termination, revocation, or cancellation of this lease, the lessee shall remove within a time set by the Commissioner of Public Lands, all structures and improvements except those owned by the State, and shall restore the site, unless otherwise agreed upon in writing or in this lease. If the lessee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the State, but that will not relieve the lessee of liability for the cost of their removal and restoration of the site.

11. The Commissioner of Public Lands shall immediately be notified in the event of a change of address of the lessee.

12. In the event of any conflict between any of the preceding clauses or any provision thereof and any of the following clauses or any provisions thereof, final interpretation shall rest with the State Board of Land Commissioners.

Other Conditions



## LEASE OF STATE LANDS CABIN SITE

LEASE NO. C. \_\_\_\_\_

THIS INDENTURE OF LEASE, made and entered into by and between the State of Montana, the party of the first part, and the person herein named, the party of the second part (lessee), witnesseth:

Date this lease takes effect:

Name of lessee:

Address:

Land located in:

County:

Description:

Total number of acres, \_\_\_\_\_, more or less belonging to \_\_\_\_\_ Grant.  
The above described land will be used by the lessee solely for the purpose of one cabin site and for incidental purposes related thereto, subject to the provisions of this lease, for a term beginning, \_\_\_\_\_ 19\_\_\_\_ and ending \_\_\_\_\_ 19\_\_\_\_, or until this agreement is terminated as hereinafter provided.

The lessee shall pay the State of Montana \_\_\_\_\_ for the period from the effective date of this lease to February 28 of the next succeeding year and an annual rental of \_\_\_\_\_ for the remainder of the term covered by this lease. Each year's rental is due in advance by December 15, of the year preceding each rental year.

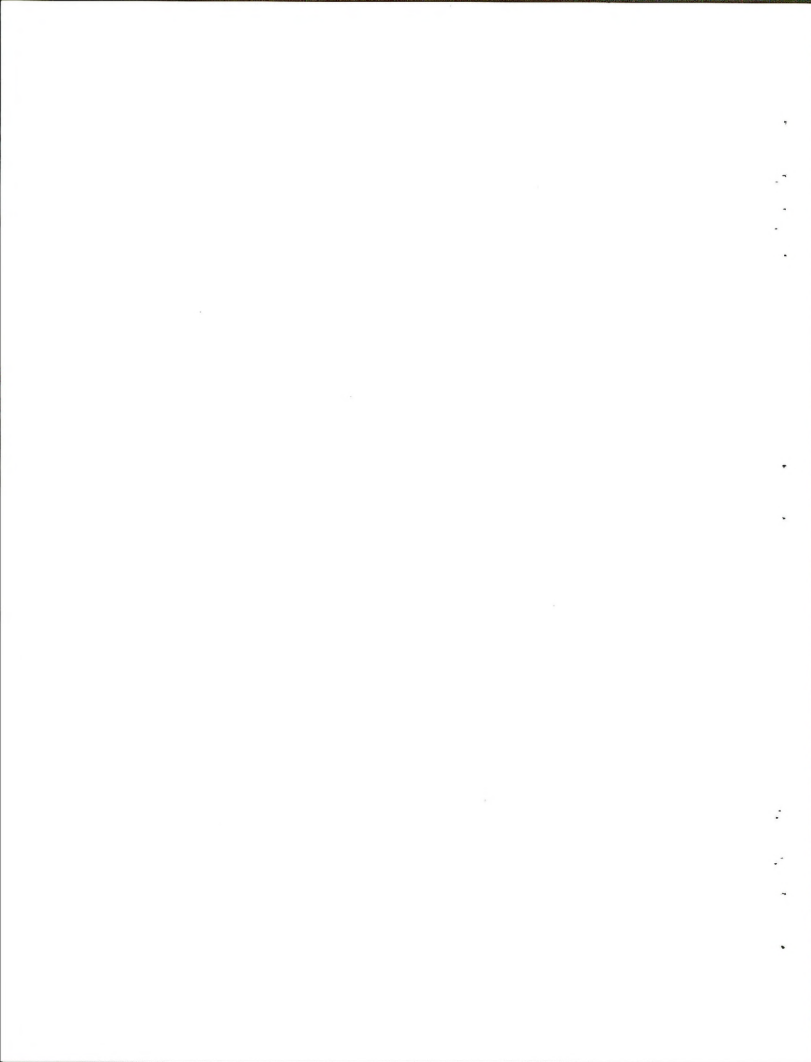
WHEREAS, The said second party has made written application to lease the above described state lands, which application is hereby made a part of this lease, in accordance with the constitution and statutes of the State of Montana and the rules and regulations prescribed by the State Board of Land Commissioners, at the annual rental, for the purpose and during the time above set forth.

Now, therefore, Witnesseth: That the said party of the first part, for and in consideration of the covenants and agreements herein mentioned to be kept and performed by the said party of the second part, his executors, administrators and assigns, does by these presents grant, demise, lease and let unto the said party of the second part, his executors, administrators and assigns, the land above described.

To Have and to Hold, The said above described premises, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, for the term herein specified, subject however to all the terms, conditions, regulations, and restrictions provided in this lease. And the said party of the second part in consideration of the leasing of the premises aforesaid by the party of the first part to the said party of the second part, does covenant and agree with the said party of the first part to pay unto the State of Montana as rental for the said land, the sum hereinafter specified, annually in advance as provided above. The receipt of payment for the first rental year is hereby acknowledged.

It is mutually understood, agreed and covenanted by and between the parties to this lease as follows:

1. Failure to pay each year's rental in advance cancels this lease.
2. The area, including lake shores or streams when adjacent to the area, must be kept free of debris, garbage, trash and any other unsightly objects.
3. The area must be kept free of all fire hazards.
4. Incinerators, fire places, stoves or any other type of burner must be fire proofed by use of spark proof screens. All fires must be extinguished prior to leaving the area.
5. The use of fire arms or fire works is not permitted on the area.
6. Felling of live or green trees is prohibited without permission from the Commissioner.
7. All buildings moved onto or constructed on the area must be approved by the Commissioner and plans submitted showing dimensions, location and material to be used. The plans must be strictly adhered to. Photographs of mobile homes must be submitted. All buildings must have a presentable and pleasing appearance. Approval for construction of any improvements must be obtained from the Commissioner.
8. Sewage disposal will be in accordance with regulations issued by the State Health Department.
9. Open pits, ditches or other unsafe conditions will not be allowed.
10. Use of any site to produce income to the lessee must be approved in writing by the Commissioner of State Lands.
11. Forest litter (needles, twigs, stuff) must be raked up for a distance of ten feet around all buildings for fire protection purposes.
12. No buildings except boat docks may be constructed within 100 feet of shoreline on rivers or lakes.
13. Only one dwelling will be permitted on each lot.
14. This lease shall continue in force only so long as in the opinion of the State Board of Land Commissioners it is considered to be expedient and not detrimental to the land or the public interests.
15. The lessee agrees to keep and maintain the above described premises in a good condition, neat and sanitary in accordance with the purposes for which said premises are leased and in the event the lessee herein is required to expend money, labor and equipment in the suppression of fires, repair of damage to the premises, or any other injury caused by the said lessee in failing to comply with the terms hereof, said lessee hereby agrees to pay to the lessor all costs incurred by the lessor as herein stated and pay for such damages, in addition, which shall occur to the leased premises, ordinary use excepted.
16. If the lessee intends to keep animals other than small domestic pets on the premises, prior approval must be obtained from the Commissioner. All animals shall be maintained, kept, and restrained, if necessary, so as to not create a nuisance or damage the premises.
17. It is mutually understood and agreed that any dispute arising under this Lease as to boundaries of the tract or cabin site lot involved, or obligations of the parties hereto as to the terms and conditions hereof, shall be submitted to the Commissioner of State Lands for arbitration, and that the decision made therein by said Commissioner of State Lands shall be in all respects final and binding upon all parties hereto, and said parties hereby agree to abide by and conform to the ruling and decision as set forth.



18. Within ninety (90) days after cancellation of this Lease, either for cause or expiration of its term or sale, the Lessee, if all fees and charges due the Lessor have been paid, may remove all structures which have been placed upon the premises, if they can be removed without damage to the land. Upon failure to remove the structures within the editorial period, they shall become the property of the Lessor.

19. The Lessee shall have a lien upon all buildings, structures, fences and all other improvements for rentals as provided in Section 81412, Revised Codes of Montana, 1947.

20. If the land under this lease is "id to some other person than the present lessee, or is leased to some other person while the present lessee owns improvements lawfully remaining thereon, on which the State has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators. The reasonable compensation that each arbitrator may charge shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements so ascertained and fixed shall be binding upon both parties. It is provided, however, that if either party is dissatisfied with the valuation so fixed, he may, within ten days, appeal from their decision to the Commissioner of State Lands, who shall thereupon cause the Chief Field Agent or Assistant Field Agent to examine such improvements and whose decision shall be final. The Commissioner shall charge and collect the actual cost of such re-examination to the owner and new lessee or purchaser as in his judgment may demand.

21. If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on blanks provided for that purpose by the Commissioner of State Lands, but no such assignment shall be binding on the State unless the assignment is filed with the Commissioner, approved by him, and payment made of the assignment fee.

22. If the lessee, or his heirs, assigns the premises and improvements to another party, he must file an address with the department showing the amount to be charged for the purchase of the cabin site area and the amount to be charged for sublease of improvements. The lessee agrees that the address shall be binding on the sublessee from the terms given by the State. The decision of the Commissioner to approve or disapprove the sublease shall be binding on all parties.

23. Garbage, other than camp material, and trash must be disposed of at an approved disposal point. The lease is subject to cancellation if the lessee disposes of waste at an unapproved dump on or off state land.

24. This lease is cancelled if any of the stated conditions of the lease are violated, or for fraud or misrepresentations, for concealment, or for a violation of its terms, for using the land for other purposes than those authorized by the lease, and for any other cause when, in the judgment of the Commissioner makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Cancellation and appeals shall be in accordance with Chapter 23, Session Laws of 1971.

25. The lessee agrees to save the state harmless from liability for any personal or property damage incurred thereon by reason of operation or use of the premises described herein.

26. This lease is subject to all existing rights of way and easements existing at the time of the granting of this lease. In addition, the lessee shall recognize the right of ingress and egress across the premises to authorized employees of the State Land Department. If public recreational access is designated in the cabin site area, the lessee agrees to not interfere with such public use of the area.

27. The lessee shall be responsible for the prevention and control of soil erosion and gullying on the area covered by this lease. The lessee shall take reasonable precautions to prevent pollution or deterioration of lands or waters which may result from the use of the land under lease.

28. Renewal Lease - If all rentals due the state under this lease have been paid and the terms of this lease have not been violated, the lessee shall upon making proper application to the Commissioner be entitled to have this lease renewed at any time within thirty days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined by the Land Board; if there are two or more persons then desiring to lease the same land, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bona fide bid made by any other applicant.

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Commissioner of State Lands, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the said Board of Land Commissioners this \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_

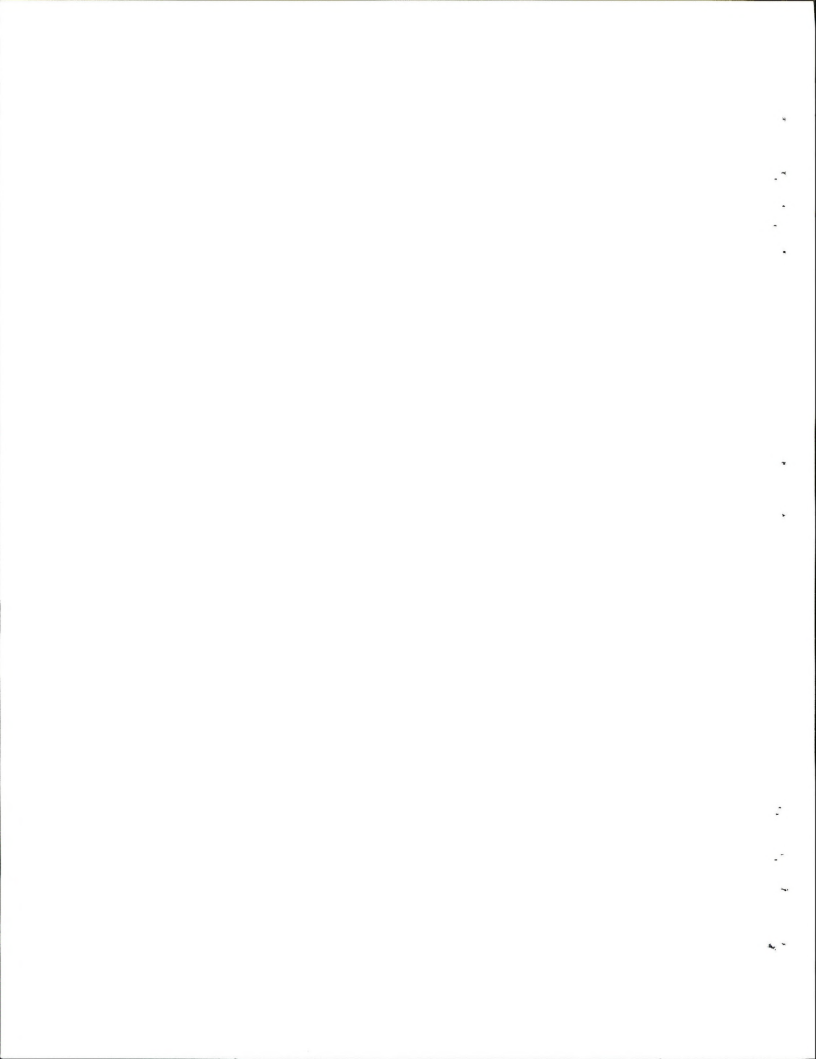
Commissioner of State Lands

Lessee

By \_\_\_\_\_

Street and No. or P. O. Box

City, State, Zip Code





## CHAPTER 4

### Public Access to State Trust Lands

The question as to whether the general public should be allowed access to State lands for the purposes of hunting, fishing or other recreational uses is a problem which has not been dealt with adequately. The rights of the lessee as well as those of the general public must be considered in the light of the legal powers and duties of the State Land Board itself. The value of the recreation industry to the state is a factor to be considered when access to state trust lands is limited by posting against trespass by the lessee of such lands. Denial of access as a limitation of recreational opportunity, however, should not be the only concern of the State Land Department. Another factor which should be considered is the possible benefits to the trust which the state might accrue if a reasonable policy for provision of access to State lands is determined. In this paper several alternative proposals, one or all of which might prove acceptable in a given situation, will be presented.

#### I. Past Land Board Policy regarding public access to state lands.

During the early 1950's an agreement, discussed in Chapter 2, was reached between the Fish and Game Department and the Land Board requiring that a survey of State lands be made to determine what lands constitute approaches to lakes and streams in the State. The Board agreed, July 30, 1952, that Fish and Game should submit for consideration: (1) Any State land bordering on lakes or streams; (2) Any other land that may have recreational value (Appendix, 1).

Such a survey, in the words of Governor John W. Bonner would be done in the "hope that we can adopt a good policy of protecting the access to streams and lakes for our sportsmen". On the basis of Fish and Game's recommendation the Board might then set aside land for recreational use.

This agreement was confirmed several times by subsequent Land Boards during the early 50's as the Fish and Game Department was concerned that the limitation of access to state lands leased to private interests was jeopardizing the recreational values of the land. Fish and Game cited the value of the recreational fishing industry to the state for tourism as well as benefit to Montanans, and remarked that posting against trespass on State lands was limiting this opportunity. Although this agreement remained in force until 1957, when the Attorney General declared it invalid (Appendix, 2), the Land Board adhered to the position that no school land can be taken away without an exchange of land of equal value or a deposit in the school fund of an amount equal to the value of the land involved. Thus, easements were sold for recreational uses to private groups as well as public agencies.

On July 8, 1953, the Board voted to incorporate a clause guaranteeing access to State land for recreational uses on standard agricultural and grazing leases:

"it is further understood and agreed that: - The leased land will be subject to entry for hunting and fishing by any person under applicable State and Federal hunting and fishing regulations."

This clause is similar to that of the Federal government and was included at the request of Fish and Game for several reasons: (1) The school lands are owned by all the people of Montana, and the lessee receives benefits at a nominal fee; (2) access need not be allowed over all leased land, an ingress and egress avenue could be indicated by the lessee; (3) The problem has been met by many property owners already (Appendix, 3,4).

The various agricultural interest groups protested the inclusion of this clause, setting forth their reasons for dissent: (1) The rates paid for grazing and agriculture were not set up in contemplation of general public use. (2) There is no allowance for the risk of animals killed by hunters, higher fire hazards, risk of property damage (3) The inclusion of such a clause should be cooperative decision. The Board requested a compromise between the concerned parties and on August 20, 1954 all parties agreed that there was no necessity for such a clause in State land leases as yet, so the matter should be held in abeyance.

Although easements were granted and the Board occasionally granted recreational use privileges on the authority of 62-312 R.C.M. (1947), some controversy over the posting of State lands continued. This difficulty ultimately resulted in a public meeting on December 21, 1967 concerning hunting and fishing on State lands. Attorney General Anderson determined that the Land Board could not grant hunting and fishing privileges without legislative authorization (Appendix, 5-8). The Attorney General agreed that the State should exercise its ownership for the best interest of its majority

of citizens but he found that hunting and fishing is a privilege, not an inalienable right - Herin v. Sutherland, 74 Mont. 587, 241 Pac. 328 (1925). And so, he said the grant of recreation privileges by the state would require a finding that "such privileges are: (1) without value; (2) and will not destroy or diminish the rental which such lands bring to the state". The result of this controversy was Senate Joint Resolution No 19, Fortieth Legislative Assembly (Appendix 9-11), which established the Committee on the Diversified use of State lands, whose report was published on December, 1968.

## II. Statutory Considerations which affect public access to State lands.

The Committee on the Diversified use of State land made numerous recommendations in regard to management of State lands, one of which was the incorporation of the multiple use concept. The Montana legislature accepted this proposal and ammended 81-103 R.C.M. (1947) to include the definition of multiple use requested by the Committee: (Appendix, 12).

"The management of all the various resources of the State-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources."

The purpose to be served through multiple use management is to "provide the most harmonious combination of uses which will not only serve the objectives of ownership but the requirement of society"

(Committee Report, P. 16, 1968). Thus, public access to State lands for recreational use must be balanced with the present use of the land and the additional compensation to the trust which might result from recreational use.

The status of recreation as a factor in multiple use planning will be clarified if and when fishing and hunting are declared beneficial uses. The legislature has made it clear that angling on navigable streams or any waters flowing through the public lands of the state between the lines of ordinary high water is a right of any person owning a fishing license (26-338 R.C.M. (1947) Appendix, 13). This statute implies that posting of state lands in Montana to anglers is unjustifiable under the law. The question must be raised, however, (1) whether the rights of the lessee would be unfairly discriminated against by enforcement of this law and, (2) whether an access route to the stream should be provided by the lessee. If the law is construed by the courts as implying the right of access to anglers, one may then question whether this right should not be extended to hunters and other would be recreational users of State land.

Attorney General Anderson raised two issues which distinguish the federal grazing permits under the Taylor Grazing Act from Montana Land Board leasing policy (Appendix, 6). Under the Taylor Grazing Act the Secretary of the Interior was authorized to establish grazing districts on federal lands, but it was specifically provided that nothing in the Act should be construed to alter or restrict the right to hunt or fish within the grazing district or as vesting in the lessee any right to interfere with hunting or fishing. Under a state

lease, however, the lessee may post to protect his leasehold and other property. The lessee in Montana has control of the surface and is obligated to protect the land from damage through fire, weeds, insect infestation, etc. On a practical level, federal lands are consolidated, most State lands are widely scattered, thus presenting both access and enforcement problems to which federal grazing lands are not subject. These problems must be dealt with before any general policy of access would be feasible.

The Land Board, however, does have the power to promulgate rules and regulations relating to the leasing of State lands in order to assure that the lands contribute in the highest attainable measure to the purposes for which they were granted to the state, 81-423 R.C.M. (1947) (Appendix, 13). Thus, should recreational use of state lands be deemed a purpose by which a greater advantage to the trust will be secured, or the well-being of the people of Montana will be advanced, a clause guaranteeing access for recreation use might be incorporated in leases of State lands.

III. Policies of Other States Concerning Public Access to State-Owned lands. (Responses to Questionnaire)

A. States which allow the lessee to post against entry to the land for recreational use by the general public.

Posting by the lessee is permitted by the States of South and North Dakota, Nebraska and Arizona. In Nebraska, however, a few agricultural lessees have subleased cabin sites along rivers and lakes to the public.

In Colorado the lessee may prohibit public access except on a 71,000 acre tract known as the Colorado State Forest. Lessees are not permitted to exact any access fee; to do so constitutes cause for cancellation of a grazing lease. Littering is the responsibility of the lessee.

Nevada reserved from sale and set apart certain state lands for State parks and recreational purposes in 1935. Fees are exacted by the State for the use of such lands. All other lands, however, were sold under contract to purchase or by outright sale.

B. States in which lessees are permitted to make charges for provision of access and recreation facilities.

Oklahoma allows lessees to charge for access privileges and encourages lessees to set up recreational facilities on the land to provide for such use. This information was obtained from a reading of the master's thesis published by Tony Buechel, Department of Fish and Game, on the subject of Recreation Use of State Lands.

In California other users must make arrangements with the lessee for use of the leased land. A lessee may make charges for access and conveniences made available to the public. All maintenance responsibilities are the duty of the lessee including littering, vandalism and fire. The State requires surety bonds to insure performance.

C. States which allow qualified access.

The general public is permitted access to extensively managed lands, i.e., grazing or timber, in Idaho, unless such access conflicts directly with licensed uses. Grazing and agricultural leases reserve

the public right of access for hunting and fishing, but lands may be posted against general access upon permission of the State Land Commissioner. Lessees may charge an access fee only if their lease is issued for the operation of a concession-type business. All lessees are responsible for damage due to littering, vandalism or fire.

Grazing and agricultural leases in Alaska also prohibit the denial of access for hunting and fishing unless specific permission is obtained from the State to close the land to hunting and fishing. It is necessary for the recreationist to obtain consent from the lessee before entering the land although no access fee may be charged. Littering and vandalism are subject to local law enforcement activity. Fire is handled through Alaska's forest warden program.

D. States which allow public access for hunting and fishing without the requirement of lessee consent.

All Wyoming state-owned land is open for hunting and fishing. A person using the land for hunting must notify the lessee that he is on the area. The lessee is to report all littering to the Land Office and assist in prevention according to the direction of the Commissioner. In the event of fire, the lessee is responsible to prevent and to help control.

All state school lands are open to the public in Oregon. Although the lessee's consent is not necessary preceding public use, some types of leases which require considerable development expense will eventually need to have public access controls. Littering, vandalism and fire are against a specific law as well as protected by



civil property rights. Enforcement is seldom needed because of the location of school lands.

New Mexico leases all state surface lands at  $\frac{1}{2}$ ¢ per acre to the State Game and Fish Department for provision of recreational use. Washington provides for the optimum multiple use of state school lands.

#### IV. Alternative proposals Regarding Public Access to Montana State lands.

A. Sale to the Fish and Game Department of a recreation use lease over and above agricultural and grazing leases.

In many states, the state lands are treated virtually as private property from the standpoint of public recreational access. There is a growing feeling throughout the state, however, that state lands should have a more public use aspect and that in some cases monetary returns to beneficiaries should take second priority to public use and enjoyment. These considerations are inherent in the amended form of 81-103; that "some land will be used for less than all of the resources." New Mexico may have joined public use considerations with a means of compensation to the trust which would prove workable in Montana. In New Mexico a lease of all the state surface lands has been negotiated with the State Department of Fish and Game at  $\frac{1}{2}$ ¢ per acre to allow access for sportsmen to the state lands.

Such a lease would turn over field law enforcement to the Fish and Game Department to control littering and vandalism. Acceptance of the Committee on Diversified use of State lands recommendations concerning state-wide fire control and the adoption of a system of

state conservation officers as part of a generalized land protection program would be important factors to ensure the success of such a program. Administratively, the Fish and Game Department is in the best position to finance this program by means of a raise in license fees. The Montana sportsman should not be adverse to a small extra charge which would allow him access to over four million acres more land.

Of course, several problems still exist in allowing this type of access to state lands: (1) If property damage does occur, will there be liability on Fish and Game, the lessee, or will the State Land Department have to take the loss? (2) The capacity of the resource to support recreational use must always be taken into account, in some cases the resources may be too fragile to allow for public use without irreparable damage. This implies greater management responsibilities to the state. (3) In many cases, the state lands are surrounded by private lands, or boundaries are ill-defined. If this proposal opens up state lands to public use, the private land owner may be unable to protect his own property. (4) The current rental value of a parcel might be lowered by allowing public access.

The recreation potential inventory program now undertaken by the Resource Development Division of the State Lands Department, coupled with close coordination with the Fish and Game Department and the primary lessee in enforcement and leasing procedures might well make such a program viable. A twenty-five year recreation lease on specific parcels which have been determined to be of public value for

access or improvement of wildlife habitat might well be worth more than  $\frac{1}{2}\text{¢}$  per acre and would probably not diminish the value of the parcel for agriculture or grazing. Such a lease could also be available to the Wildlife Federation or other interested recreation-oriented groups or local governmental agencies.

B. Incorporation of clause in grazing and agricultural leases prohibiting the denial of access for hunting and fishing unless specific permission is obtained from the State.

This is the program which allows for public access to state land in Alaska and Idaho. If the lessee can show good cause why the public should not be allowed access to the state land, the Commissioner may study the recommendation and determine whether access should be denied. Some criteria should probably be established regarding state land access in general which would afford some guidance in these matters. Although such a program would be advantageous to the State because of its simplicity, the State would receive little or no compensation to the trust and the problems already mentioned in conjunction with the Fish and Game lease would have to be resolved on a case by case basis.

C. Zoning of state land in relation to dominant potential use.

In the State of Washington the legislature has determined that any interference with a navigable waterway is against the public benefit. The State has taken the responsibility to control these shoreland areas by means of a program of zoning in accordance with the dominant potential use of the land affected. Legislation to this effect has

passed both houses of the state legislature and is to be placed on the ballot for a referendum in November. Such a program would entail land use planning which would prove of great benefit to the future disposition of state lands in Montana. The lack of good county zoning is a factor which adversely affects the possibility of cabin site leasing on state lands as well as enlarging the possibility that some parcels of state land are being put to less than their best possible use. Future land use planning will be a necessity if decisions concerning state land are to be made on a basis which will ensure adequate compensation to the trust as well as be of beneficial use to the public. Land use studies should evaluate and consider recreation potential as a valid use of state lands. This determination would be of great assistance to the state in balancing the potential uses to which a parcel of state land might be placed. Planning of state-owned lands would also augment the voice of the State concerning the disposition of adjoining Federal public lands.

D. Full Management of Trust Lands by the State in Regard to Access.

This program would allow posting by the State only when it is deemed necessary in the interest of protection of the rights of the lessee and/or the State. Institution of such a program would require greatly expanded field control and financing would have to be by means of user fees. This proposal would probably be effective only on rather large blocks of state land which have a high degree of recreation potential.

In California the Land Division places recreation potential near the top on its list in analysis of surface land use alternatives.

By trading surface lands, the state has created a number of state parks, and can charge for their use. A general access easement of \$20 per year is charged in California and this apparently applies only to State parks. In areas of Montana which provide low recreation opportunities at the present time, park development by the State Land Department might be beneficial not only to the locality but also as an income producing device. Financing for park development could be accomplished on a 50/50 cost share with the Bureau of Outdoor Recreation, or on a 25/25/50 basis among the state, the locality concerned, and BOR.

E. Establishment of hunting and fishing districts.

State land is usually located in an area with a diverse pattern of ownership and often forms an integral part of a farm or ranch operation. A ranch operator who leases state land uses this land according to how the state land geographically relates to private land. Depending upon the characteristics of the land there may be portions of his state lease which are more vital to his operation during certain periods of the year than some portions of his private land. Federal land may also be in this situation. The concept of a hunting and fishing district takes this vital use into account and would designate areas which should be closed to general public access because of possible interference with this vital use. A parcel of State or other public land might be closed to public access while a contiguous parcel of private land might be open for public access.

Such a concept would require an organization so that sportsmen and landowners (public and private) could find ways to identify the

open and closed areas, supply this information to the public, and police the district. User fees might even be collected by the district to print maps, pay for damages caused by the public, or to pay for a person or persons to supervise the district. Recreationists would be willing to pay to help subsidize a reasonable system of public access.

#### V. Summary

The major stumbling blocks to public access on State-owned lands are: (1) Lessee liability and (2) Provision for an interest in the land without the State receiving just compensation. So long as the lessee is responsible for fire or other property damage, the State can hardly stop him from posting to protect his leasehold interest. Legislation is needed to shift this burden of liability and such action might be considered in an Organic Lands Act. Even without legislative direction, the State Land Department must exercise greater management responsibility to determine when posting is unreasonable.

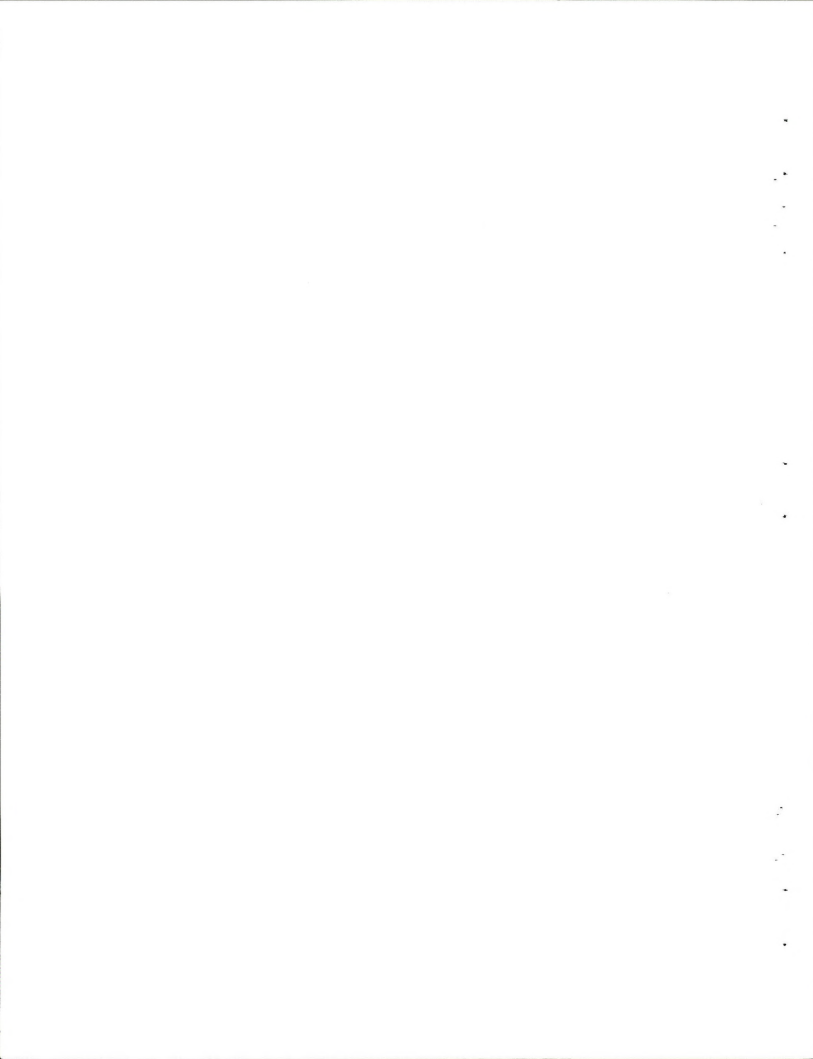
The State should receive compensation for provision of access to its lands. Some type of user fee system would fulfill such a requirement. User fees, however, will bring numerous protests from recreationists who hold that public use of state lands should be free.

A system of recreation districts throughout the state would enable the landholder to ensure that sportsmen would not enter areas around concentrations of cattle, buildings or ground under cultivation. The multiple use benefit of state land would be assured and public access could be placed under reasonable controls.

The state lands are public lands of the State of Montana. If action is taken at the present time to provide for a workable system

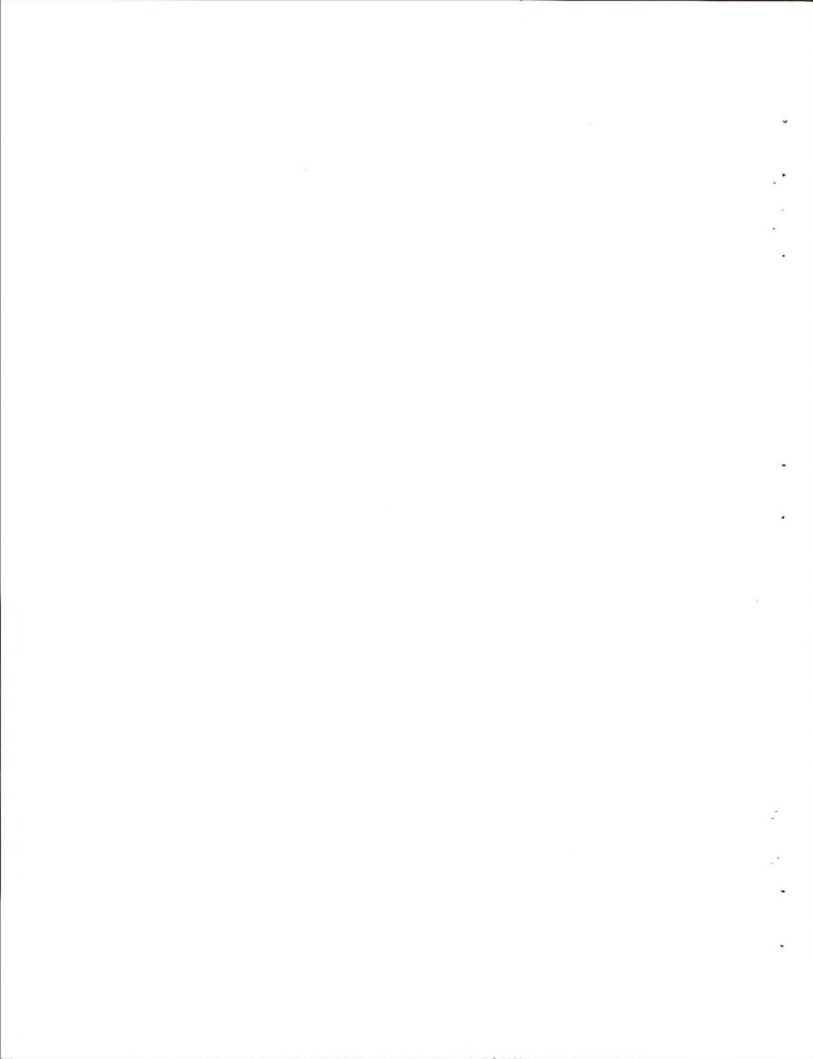
of public access to state lands the Land Board will be acting in perfect accord with multiple use concept of Section 91-103 (R.C.M., 1947).

Once again, all of the interview summaries are extremely important to the topic of public access. Most comments are contained under the headings: "Public Access", "Landowner Liability", and "Fee hunting" in each summary included in the General Appendix.





APPENDIX TO CHAPTER 4



MONTANA STATE BOARD OF LAND COMMISSIONERS

July 30, 1952

and the

MONTANA STATE FISH AND GAME COMMISSION

This agreement is formulated in the best interests of the people of Montana that present and future generations may be insured access to the waters of the State for recreational fishing.

It is hereby agreed that the Montana Fish and Game Commission through its Federal Aid in Fishery Program will examine and appraise all tracts of state lands adjacent to lakes and streams in Montana for present land use, for the value of the body of water for recreation, for the importance of the land as public access to the water, and for possible conflict of present land use with the proposed for access, and that the Montana Fish and Game Commission will furnish the Montana State Board of Land Commissioners written reports of these appraisals together with recommendations for preservation of desirable tracts for public access to fishing waters.

It is further agreed that the State Board of Land Commissioners will accept the appraisals of the Montana Fish and Game Commission, will review them, and where consistent with the best interest of the people of Montana and with Sections 81-423, 81-903 and 81-907 of the Revised Codes of Montana for 1947, will reserve from sales for a period of ninety-nine (99) years such lands as are deemed valuable for public access to waters for recreational fishing and will further formulate and enforce regulations for leased lands whereby public access to fishing waters will be insured.

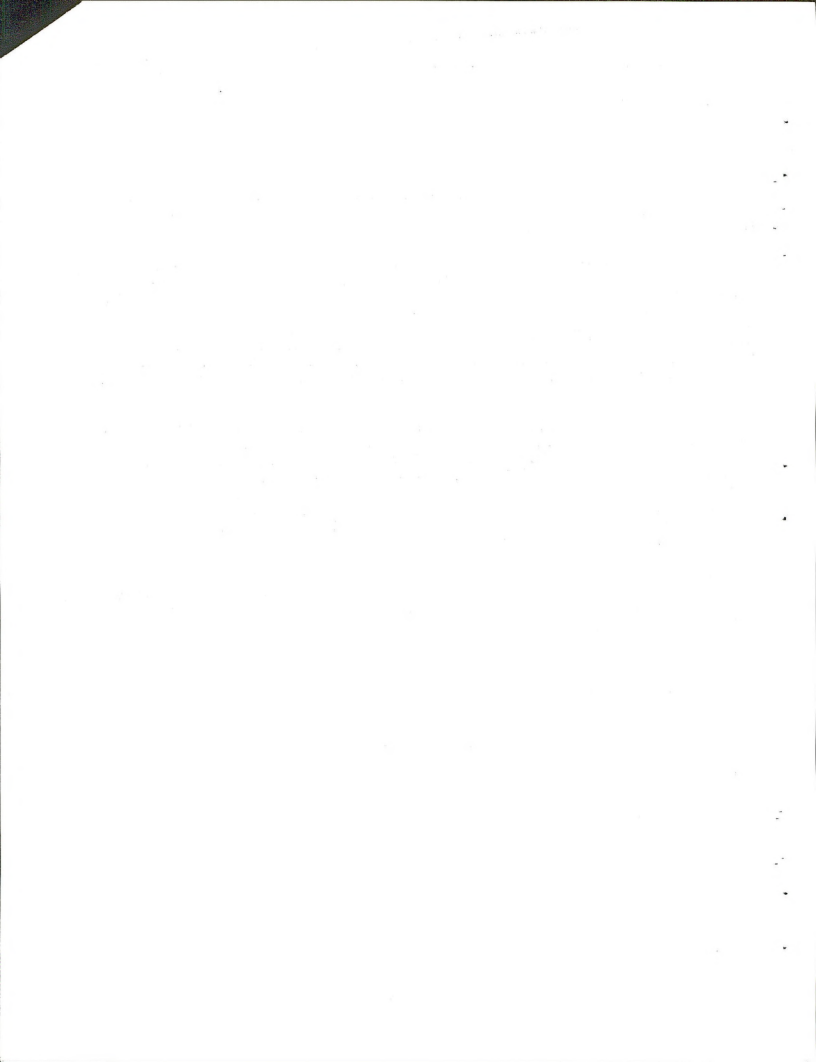
This agreement will become effective when and if the proposed project of the Montana Fish and Game Commission is approved by the Federal Aid Division of the U. S. Fish and Wildlife Service and shall remain in effect for a period of ninety-nine (99) years.

MONTANA STATE BOARD OF LAND COMMISSIONERS

BY W. P. Pilgeram

MONTANA STATE FISH AND GAME COMMISSION

BY Ed M. Boyes



State of Montana  
Office of The Attorney General  
Helena

August 12, 1957

FORREST H. ANDERSON  
ATTORNEY GENERAL

RECEIVED  
AUG 13 1957

Mr. Lou E. Bretzke  
State Lands and Investments  
Helena, Montana

STATE OF MONTANA  
Department of  
State Lands & Investments

Dear Mr. Bretzke:

You ask me whether the State Land Board can enter into a 99 year agreement with the Fish and Game Commission not to sell such state lands as are deemed valuable for public access to waters for recreational fishing.

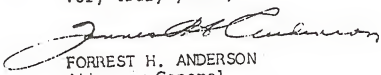
I believe such an agreement invalid for these reasons.

1. The Land Board is charged by law to act as trustees in the administration of school lands. An agreement for 99 years would disable the Land Board from exercising a trustee's discretion and judgment when particular facts might arise requiring it. The term is unreasonable.

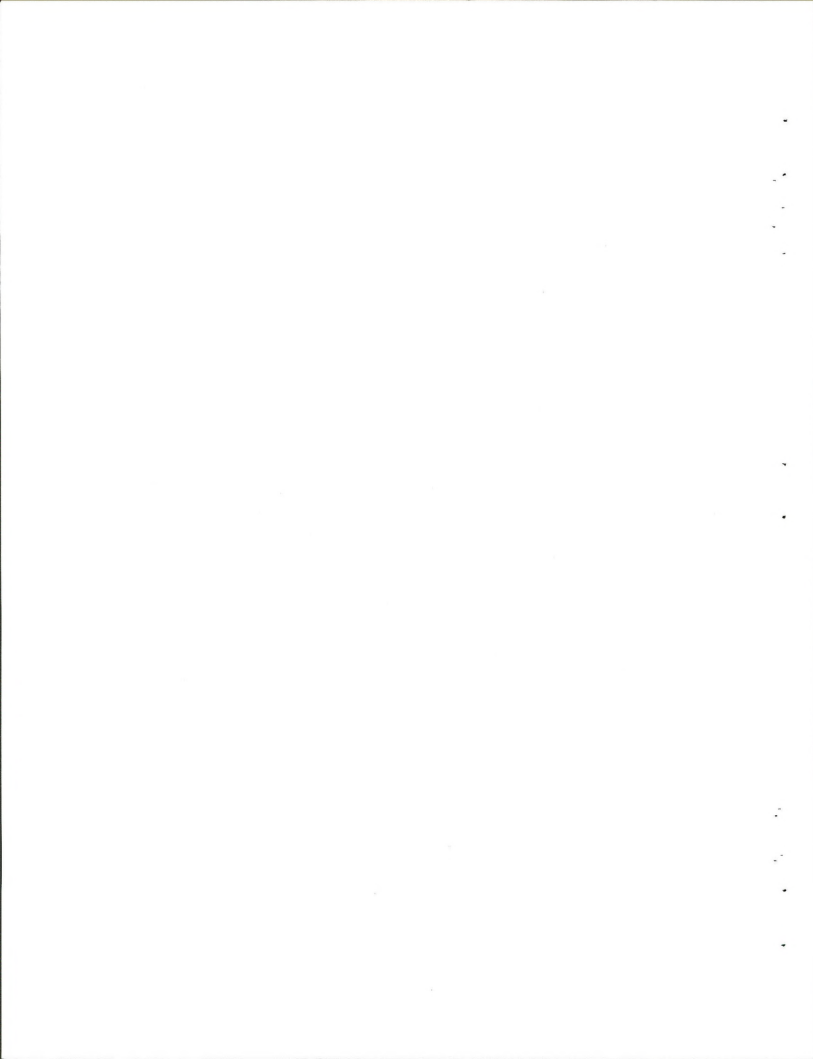
2. The law requires that full market value be received for any interest in school lands disposed of. This agreement would grant interests in land with no provision for payment.

Although the Land Board can not enter into an agreement of this type it could by resolution achieve some of the results of such an agreement. Such a resolution of course could be revoked by it or future Land Boards.

Very truly yours,

  
FORREST H. ANDERSON  
Attorney General

FHA:js



## STATE OF MONTANA



DEPARTMENT OF

FISH AND GAME

STATE OF MONTANA  
DEPARTMENT OF  
FISH AND GAME

Helena, Montana

June 23, 1953

OK

Montana State Board of Land Commissioners  
Capitol Building  
Helena, Montana

Gentlemen:

Attached please find a copy of the lease for land by the Bureau of Land Management. May we call to your attention the last part of Section 3(a), wherein is stated, "It is further understood and agreed that:--- The leased land shall be subject to entry for hunting and fishing by any person under applicable State and Federal hunting and fishing laws and regulations."

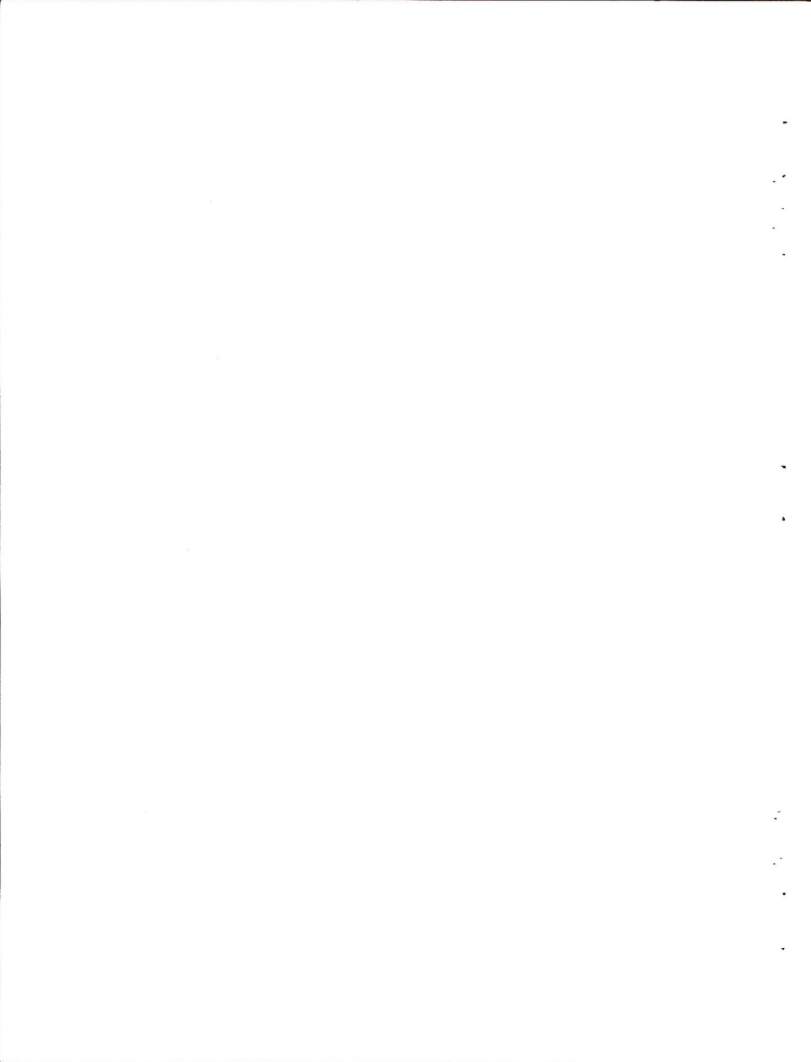
We feel that this clause is exceptionally valuable to the people of Montana, and we respectfully request that you give consideration to including such a clause in the lease of State Lands.

We realize that the provisions for public access in this clause can be met with much less risk by an individual leasing grazing land than by one leasing land for other purposes such as the raising of alfalfa; however, we request that you consider three matters in this behalf. First, the land is owned by the people of Montana and the leasee receives benefits from the land at a nominal fee. Secondly, particularly as relates to fishing, access need not be allowed over all of the section of land being leased. Where access by the public would create a hazard to the ranchers operations, he could indicate an avenue to be used for ingress and egress to streams or lakes. Thirdly, this problem has been met by many property owners who realize the value of recreation to the people of Montana, and we believe a person leasing state lands could solve this problem as well.

Your consideration of this matter would be greatly appreciated.

Yours very truly,

W. J. EVERETT, Acting  
STATE FISH AND GAME WARDEN





July 9, 1953

Mr. W. J. Everin,  
Acting State Fish & Game Warden,  
Helena, Montana.

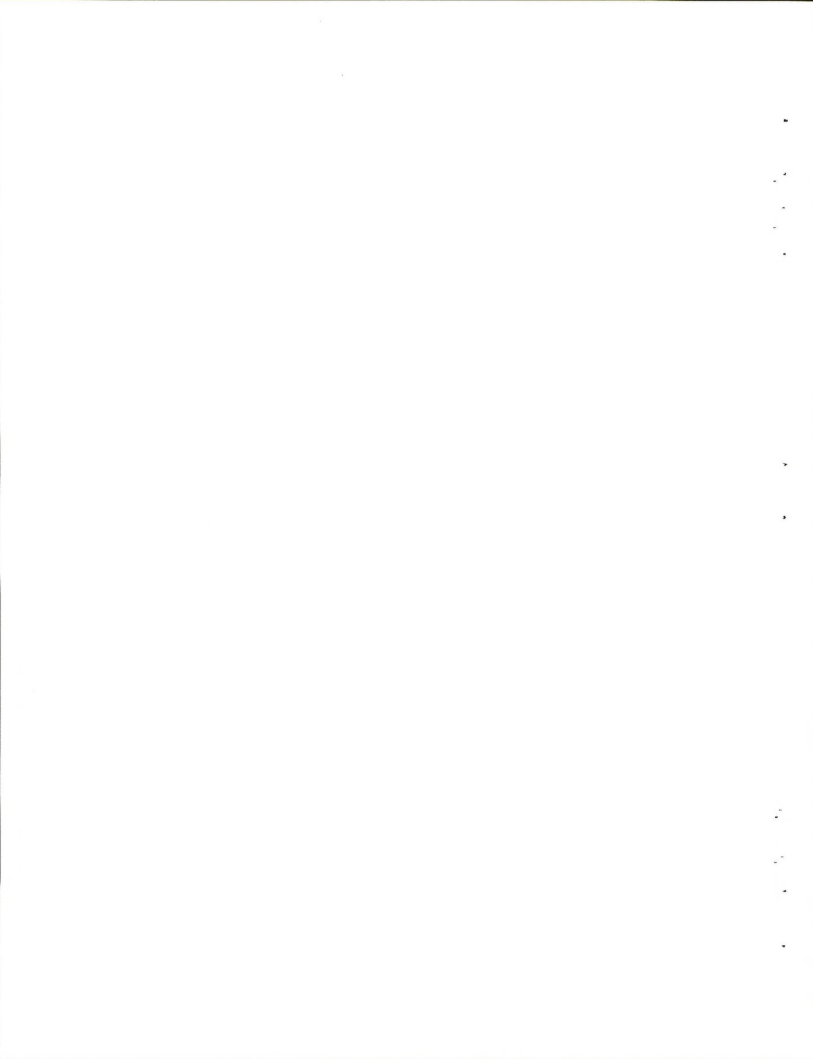
Dear Mr. Everin:

At the regular meeting of the State Board of Land Commissioners yesterday afternoon, it was agreed that the clause quoted in your letter of June 23, i.e. "It is further understood and agreed that: the leased land shall be subject to entry for hunting and fishing by any person under applicable State and Federal hunting and fishing laws and regulations" shall be incorporated in grazing and agricultural State leases issued hereafter, in accordance with your letter of June 23rd.

Very truly yours,

Lou E. Bretzke  
Secretary of the State Board of  
Land Commissioners

ML



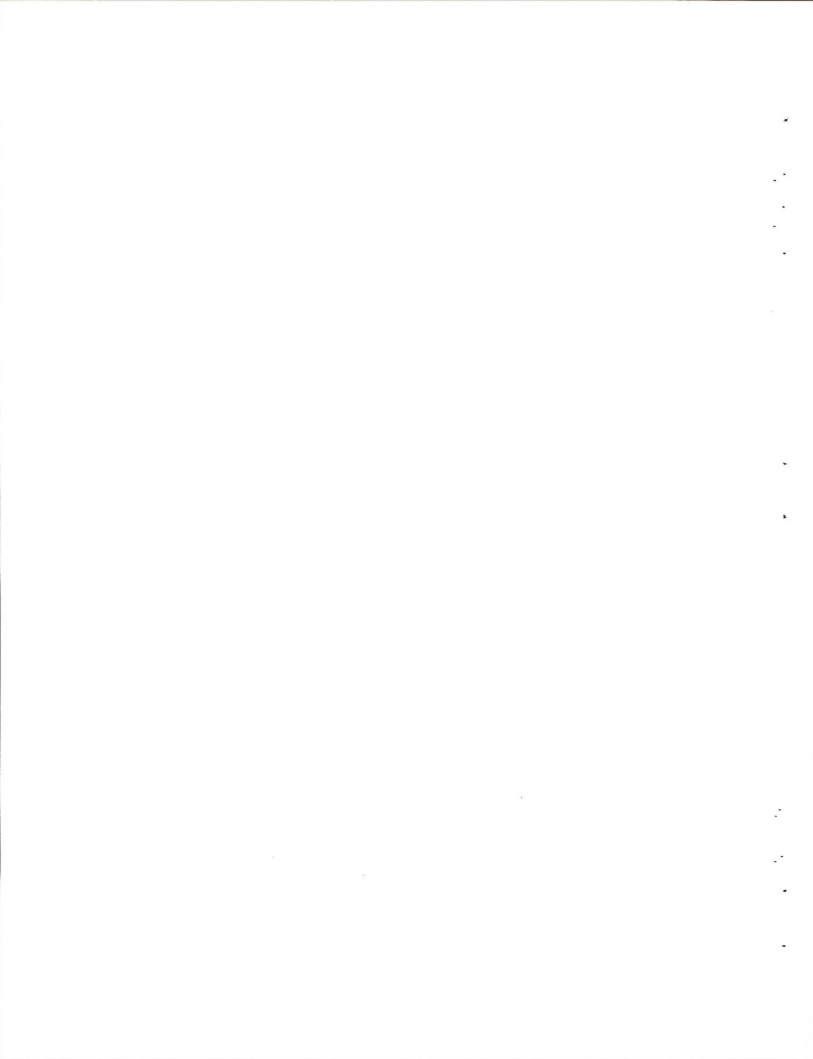
ATTORNEY GENERAL ANDERSON'S MEMO REGARDING PUBLIC ACCESS TO  
STATE LANDS (December, 1966)

This Board has been asked to determine the rights of the citizens of this state to fish and hunt on state owned land. Any determination of this nature must, necessarily, determine the rights of lessees of state owned land; the legal nature of hunting and fishing; and the powers of the Board.

It has been contended, and we agree, that the powers of this Board are only those which are granted by the law. It has further been contended, if we properly understand the contention, that state owned lands are "public lands held in trust for the people" and therefore, the people have a legal right to use such lands in the manner that is most beneficial to them. As an abstract principle, we agree with this whole-heartedly. However, government -- the powers of this Board -- are and must be governed by law rather than the personal interpretations of abstract principles that each of us, as Board members, may subscribe to. The basic law of Montana is contained in our Constitution. Article XVII, section 1, Constitution of Montana, provides in part:

All lands of the state that have been, or that may hereafter be granted to the State by Congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, --- and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such a manner as may be provided by law, be paid or safely secured to the state; - - - (emphasis added).

The legal questions are: (1) Is the granting of permission to hunt or

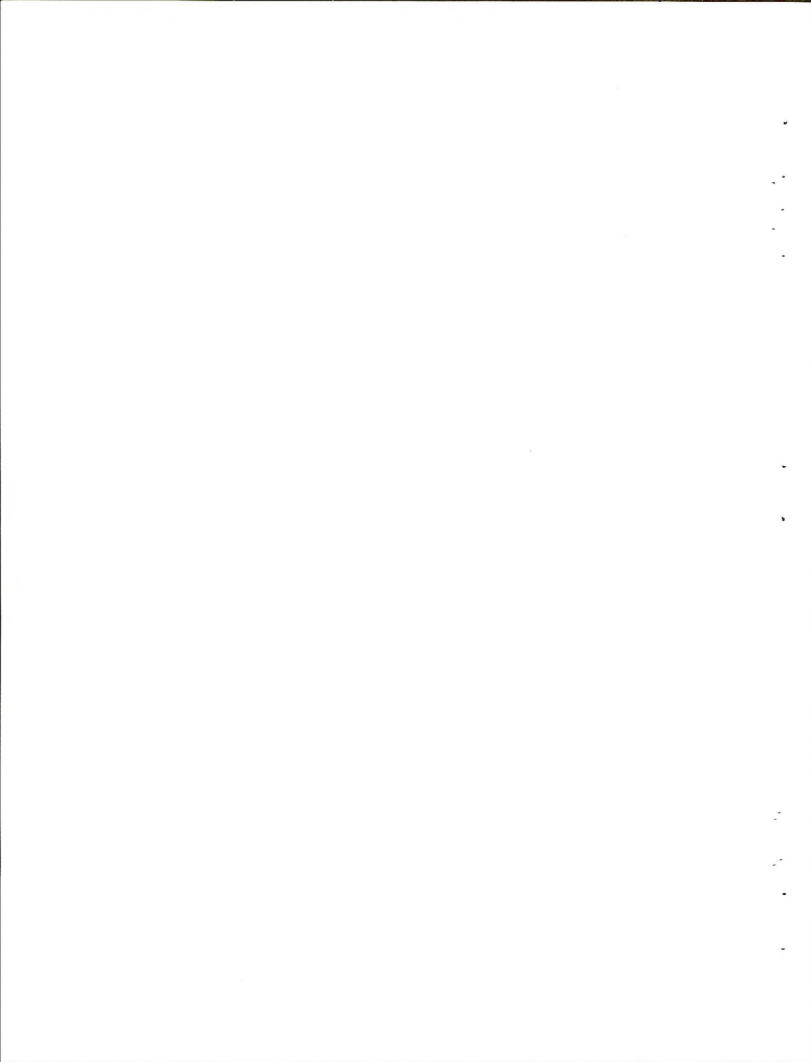


fish on state land an interest in the land; and, (2) if it is an interest in the land, what is its full market value?

Neither the Legislature or the Supreme Court of Montana has ever set forth the law on these specific questions. To be sure, the Legislature and Court have said that fishing and hunting in this state is a privilege rather than a right of Title 26, R.C.M. 1947 containing the fish and game laws and Herrin v. Sutherland (1925) 74 Mont. 587, 241 Pac. 328.

It should follow then, that if there is no legal right to fish or hunt or privately owned land there is no right to do the same on public land. Legal rights can not be altered by the character of land ownership.

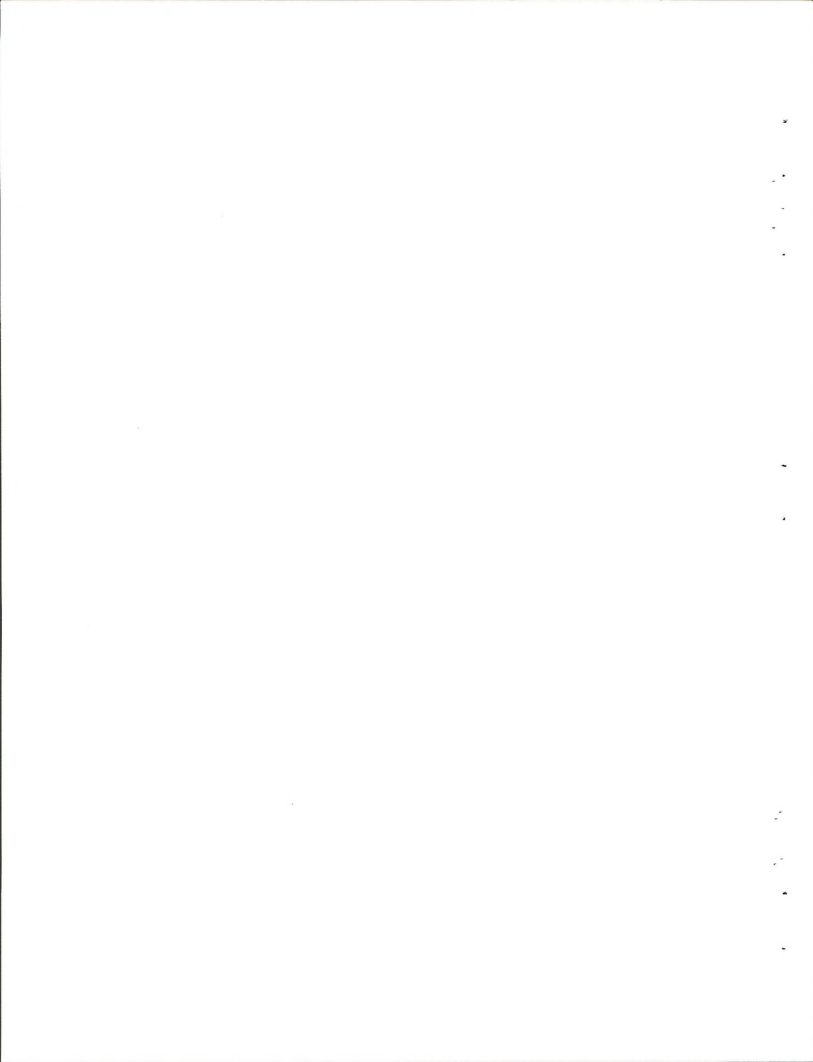
If there is no legal right to use state land for fishing and hunting, there still remains the question of whether the state should exercise its ownership for the best interests of the majority of its citizens. We believe that the only answer to that question is Yes. However, this state may only grant hunting privileges to the citizens of this state after making a factual determination that such privileges are: (1) without value; (2) and will not destroy or diminish the rental which such lands bring to the state. Otherwise, the Constitution forbids it and this Board from disposing of any interest in the land "except in pursuance of general laws" which will assure the state of "full market value of the estate or interest disposed of". The Legislature has never enacted laws on this subject and without such laws the Board is powerless to act. Moreover, this Board has insufficient evidence before



it to determine whether the granting of fishing and hunting privileges on state land would increase, decrease or stabilize the rental which the state receives from said land. Before such a determination could be made this Board or the legislature would have to investigate and consider evidence on all aspects of the proposal. We would suggest that a survey be made to resolve the following questions whether there would be: liability, fire loss, cost of fire protection, crop damage, an effect upon rentals, and any other information which would influence the "full market value" of the land. Since the Legislature has neither authorized nor appropriated funds for the collection of such information, we do not believe that it is possible for us to proceed with the matter further at this time.

In passing we would like to note that it has been suggested that this Board administer state lands in the same manner that the Federal Government administers Taylor Grazing Lands. Philosophically, we agree with this premise. Multiple use of public lands should provide the greatest good for the majority of people. This is the purpose of government. However, this argument escapes the legal provision that governs the operation of this Board. We are administering trust lands which were given to Montana for a specific purpose and if we fail to abide by that trust, then we must suffer the consequences. No question of trust restricts or governs Congressional determination as to how such lands shall be used.

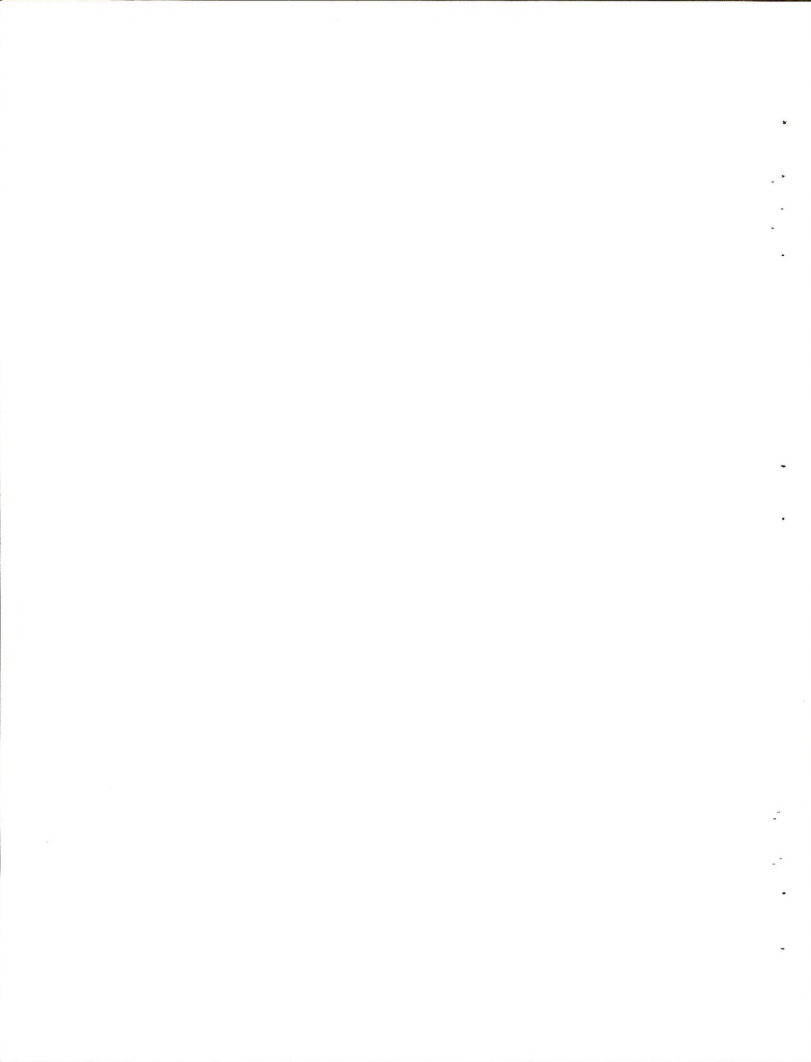
There are 5,186,151 acres of state land. Of this 3,033,976 are not accessible to the public because there are no roads.





The initial cost to implement fishing and hunting rights on state land is estimated to be by the land commissioner and state forester in excess of a quarter of a million dollars. The annual cost of administration thereafter may be a similar amount. The loss to the state trust funds cannot be estimated. The legislature must provide the funds if it wishes to implement the general land usages.

Therefore, we recommend that this Board ask the Legislature to consider this problem and provide statutory guidelines for the operation of this Board in the administration of state lands.



SENATE  
JOINT RESOLUTION No. 19

INTRODUCED BY MITCHELL, DZIVI, MAHONEY

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES  
REQUESTING THAT THE GOVERNOR APPOINT A COMMITTEE TO STUDY  
THE DIVERSIFIED USES OF STATE LANDS AND TO RECOMMEND SUCH PLANS  
AND PROGRAMS AS THE COMMITTEE DEEMS NECESSARY TO PROVIDE FOR  
THE OVERALL USE OF STATE LANDS FOR BOTH PUBLIC RECREATION AND  
AGRICULTURAL PURSUITS TO THE GREATEST BENEFIT FOR THE PUBLIC  
IN GENERAL.

WHEREAS, the opportunity for outdoor recreation represents  
one of Montana's greatest attractions; and

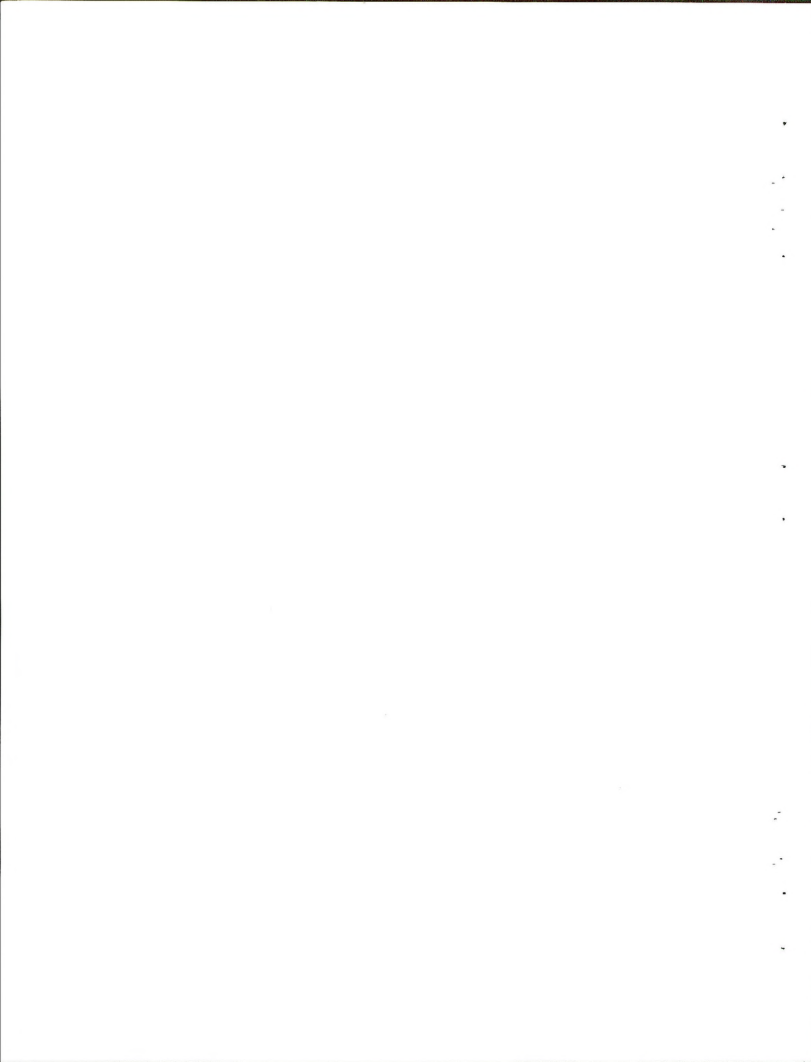
WHEREAS, outdoor recreation depends upon suitable lands in  
sufficient areas for its enjoyment and development; and

WHEREAS, the annual increase in personal income and avail-  
able free time offers every expectation that the needs and  
demands for public recreational lands will increase; and

WHEREAS, large areas of lands owned by the state of Mon-  
tana which are suitable for outdoor recreation are not presently  
being used to the fullest extent for recreational purposes; and

WHEREAS, it is to the benefit of the general public to obtain  
the best rentals possible for the lease of state lands in order to

SENATE JOINT RESOLUTION NO. 19



afford the maximum support for education in Montana; and

WHEREAS, use of state lands for agriculture is a major factor in many successful agricultural operations in Montana; and

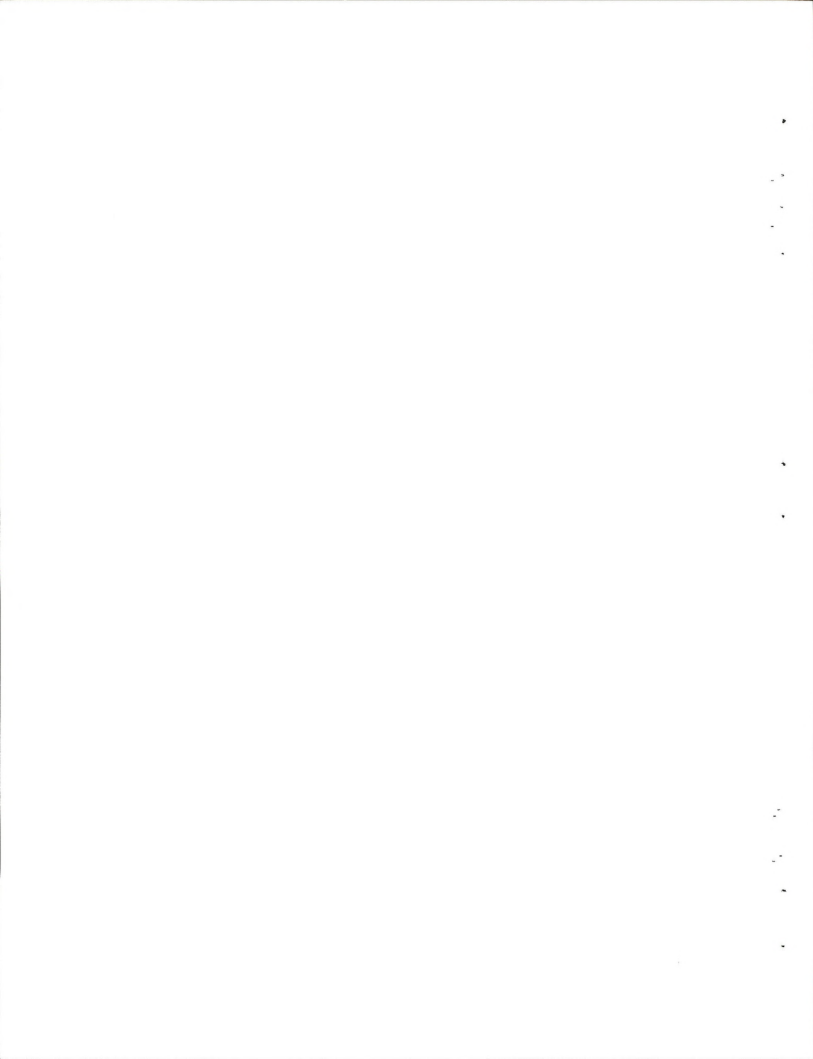
WHEREAS, the multiple use concept of management of state lands is generally accepted as a just method for obtaining maximum diversified use for the overall public benefit; and

WHEREAS, recreational use of state lands is generally compatible and not unreasonably restrictive, with other uses of state lands, including production of oil, gas and minerals, grazing of livestock, and other agricultural pursuits, logging operations, and others; and

WHEREAS, a great amount of confusion and misunderstanding presently exists relating to the diversified and potential uses of state lands for the general public benefit.

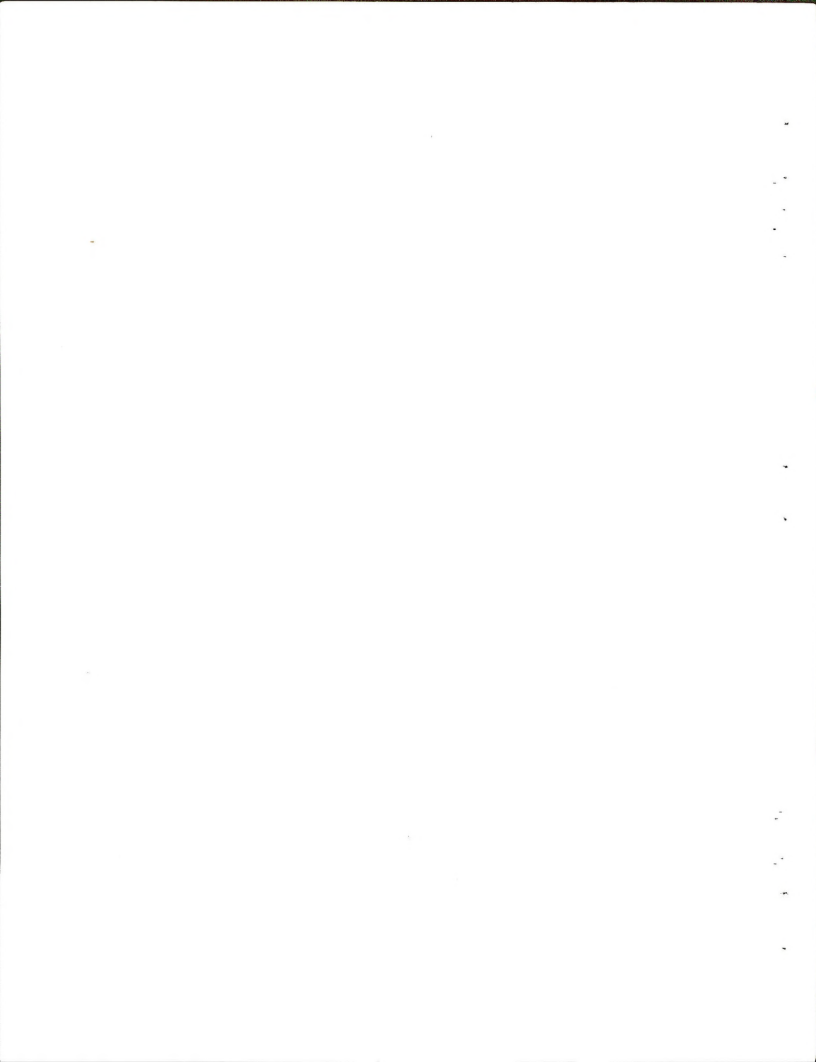
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor appoint a committee of thirteen (13) persons, to include the Commissioner of State Lands and Investments, the Director of the Montana Fish and Game Department, a Wildlife Extensionist from either the University of Montana or the Montana State University, and one representative of each of the following interests: oil and gas, mining, timber, grazing, agriculture, public education, wildlife, public recreation, and the governor to appoint two (2) additional members at large, to pursue a study of the potential and diversified uses of state lands to meet the future needs of the people of Montana for



public recreation and to permit the expected and desired growth of the agricultural and livestock industries of this state; and further that such committee formulate plans and programs as may appear necessary and desirable to provide for the fullest and most diversified use of state lands as is in the interest of the public in general.

BE IT FURTHER RESOLVED that the said committee prepare and have ready for submission to the 41st Montana Legislative Assembly such plans and programs as it may formulate under this directive, together with suitable recommendations and a draft of proposed legislation to carry out such objectives.





81-103. (1805.3) Powers and duties of state board of land commissioners. The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. It is the duty of the board to manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

History: En. Sec. 3, Ch. 60, L. 1927;  
amd. Sec. 1, Ch. 113, L. 1969.

#### Amendments

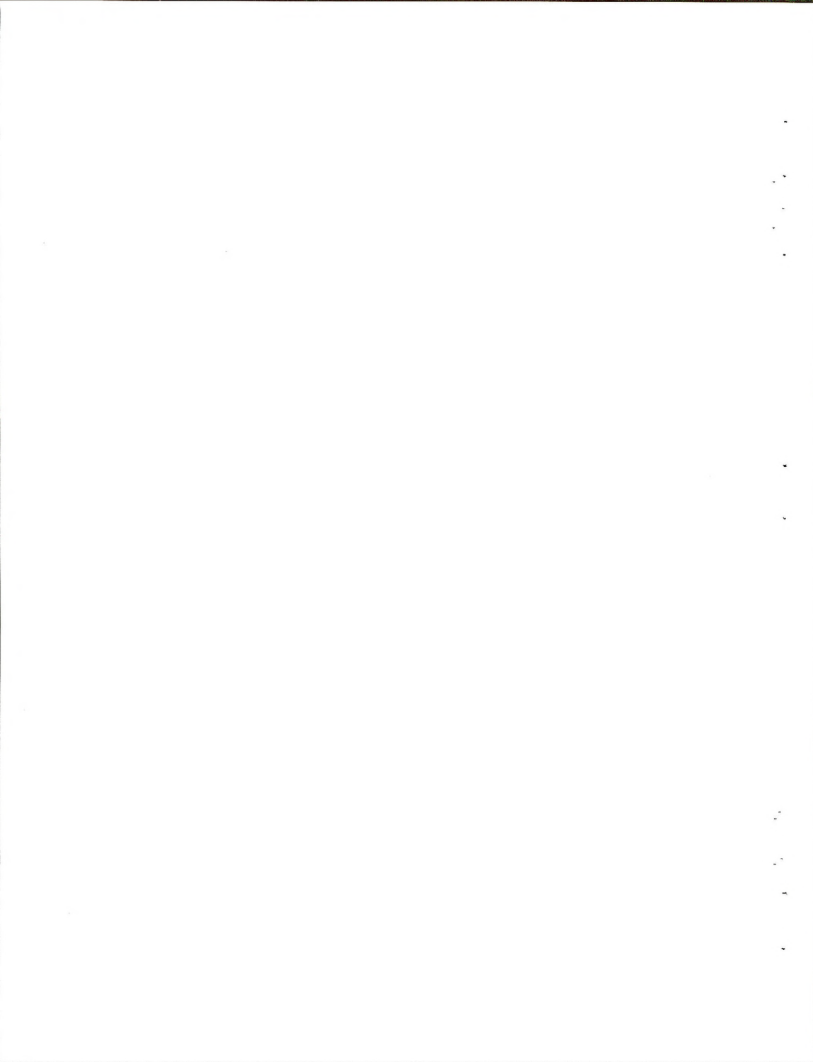
The 1969 amendment inserted the third sentence providing for management of state-owned lands under the multiple-use concept.

#### Cross-References

Board functions retained after reorganization, sec. 82A-1505(2).

#### Leasing State-owned Land

State board of land commissioners had discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, 147 M 46, 400 P 2d 808.



26-338. (3717.3) Navigable and public waters open to fishing. Navigable rivers, sloughs or streams between the lines of ordinary high water thereof, of the state of Montana, and all rivers, sloughs and streams flowing through any public lands of the state, shall hereafter be public waters for the purpose of angling, and any rights of title to such streams, or the land between the high water flowlines or within the meander lines of navigable streams, shall be subject to the right of any person owning an angler's license of this state who desires to angle therein or along their banks to go upon the same for such purpose.

History: En. Sec. 3, Ch. 95, L. 1933.

Collateral References

Fish 3.

36A C.J.S. Fish §§ 6-8.

62-312. (1842.1) State parks and recreational and camping grounds. The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation or demise, to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this act shall be given an appropriate name by the state board of land commissioners.

81-423. (1805.37) Leasing regulations. The state board of land commissioners shall have the power, and it is hereby made its duty, to formulate and prescribe such additional rules and regulations relating to the leasing of state lands, not inconsistent with the provisions of this act, as it may from time to time deem necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they have been granted to the state of Montana.

History: En. Sec. 37, Ch. 60, L. 1927.



## CONCLUSION

The State Board of Land Commissioners should consider the long-term benefit of participating in the parks and recreation business, even if it is required to charge for such public use. Any activity in this regard must be preceded by special planning and multiple use impact evaluation to ensure the least possible damage to the resource itself. In order to avoid the mistakes of the past, the type of recreation to be fostered should be directed into activities which will not adversely effect the environment. A widespread program of cabin site leasing by the State may result in a negative long-term committment of the resource and thus not be of substantial benefit to the trust. Lessees, conservationists and sportsmen should all work together with the State to determine the optimum multiple use for any parcel of State Trust Land which has high recreation potential. If there is to be special recreational use of the parcel, then the users should compensate the trust for such use.

Some Resource Development funds administered by the Department of State Lands should be directed into the development of recreational facilities on State Lands. In some areas, parks, picnic areas or reservoirs might be developed to benefit the lessee and the surrounding community as well as to increase the property value of the resource itself. There is great potential for experimentation in such development and the State should look to provision for new forms of recreation which may not detract from the resource. Revenue producing recreational parks, bicycle parks or concessions could be developed by the

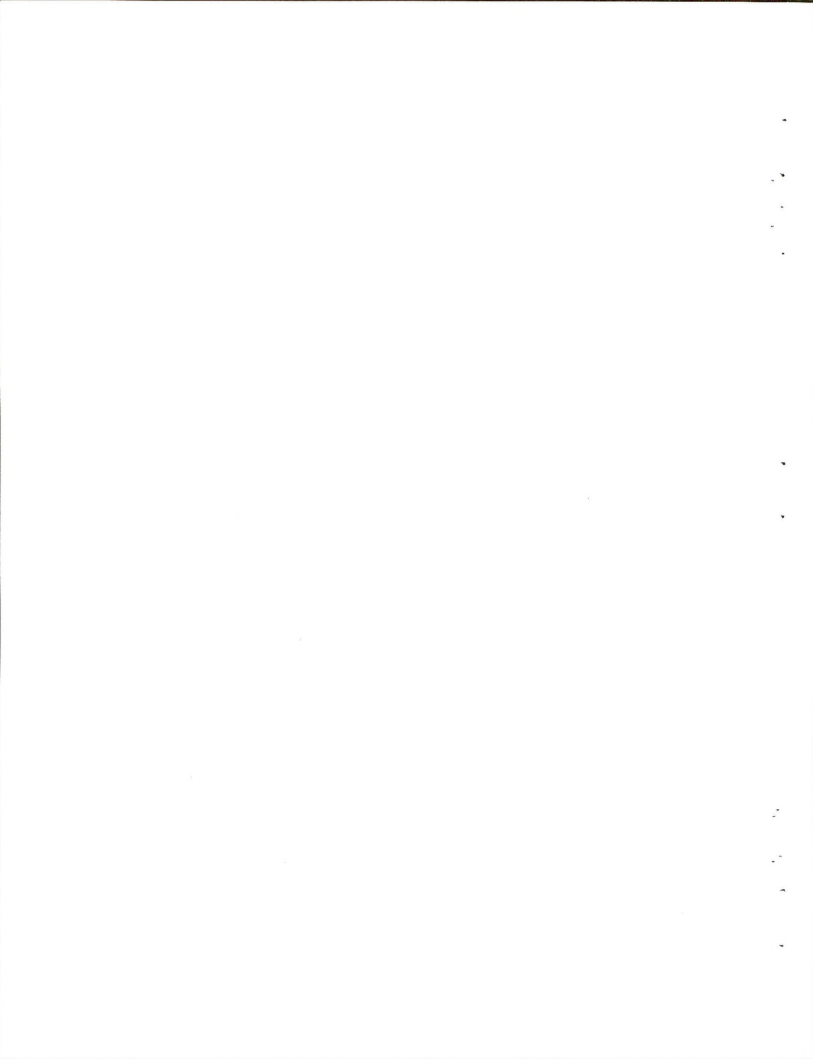
State as destination points or as sophisticated take-off camping areas to wilderness areas and National Parks. The State should promote positively its welfare by developing historical sites on State-owned land. Increased property values and tourism as a result of such development should be of ample benefit to the trust. More highly intensified resort areas, dude ranchers, private compgrounds and trailer parks on the fringes of Montana's National Parks may be the wave of the future as the Park Service and Forest Service begin to phase out campgrounds within and surrounding the Parks. Camp site, rather than cabin site leasing, may be of future demand in Montana. A trailer or tent spot where a cabin would have been leased would be of far less damage to the resource and would be available to a more diversified range of people.

The State could request ranchers to place convenience gates for sportsmen on leased lands as well as lease certain areas for fishing access sites and improvement of wildlife habitat. Thus, each area of State lands should be evaluated to determine its intrinsic value in terms of multiple use.

In order to set guidelines and objectives for the State Lands Department, a legislative mandate should be sought to set forth exactly the objectives to be attained by multiple use management of the land. What public uses are deemed beneficial and what compensation to the trust is required could be clarified in an Organic Lands Act. The questions of landowners liability and public access could be considered by the legislature and public hearings should be designated to ensure wide-ranging public input. The role of the State Land Department

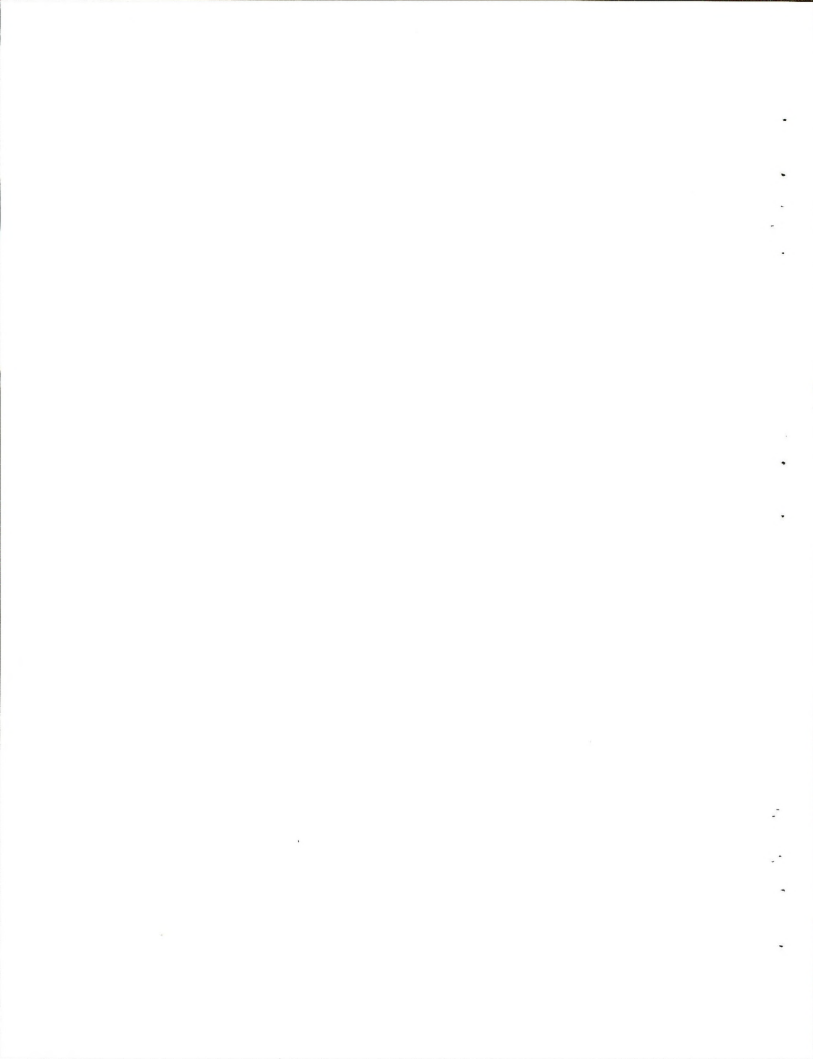
in recreation planning should be defined in order that increased management of the State trust lands will be directed to the optimum benefit of Montana.

Furthur information on this subject may be obtained by contacting Robert S. Duncan, Acting Administrator Resource Development, State Lands Department, Helena. The authors permanent address is 405 Kalmic Road, Boulder, Colorado 80302. The subject of "Public Access to Wildlands in Montana" is currently under study by Mr. Vito Ciliberti, Department of Forestry, University of Montana, Missoula. I also obtained information from the master's thesis, "Use of Public School Land For Recreation," Tony Buechel, which was written at Colorado State University. Mr. Buechel is now employed by the Department of Fish and Game in Kalispell.



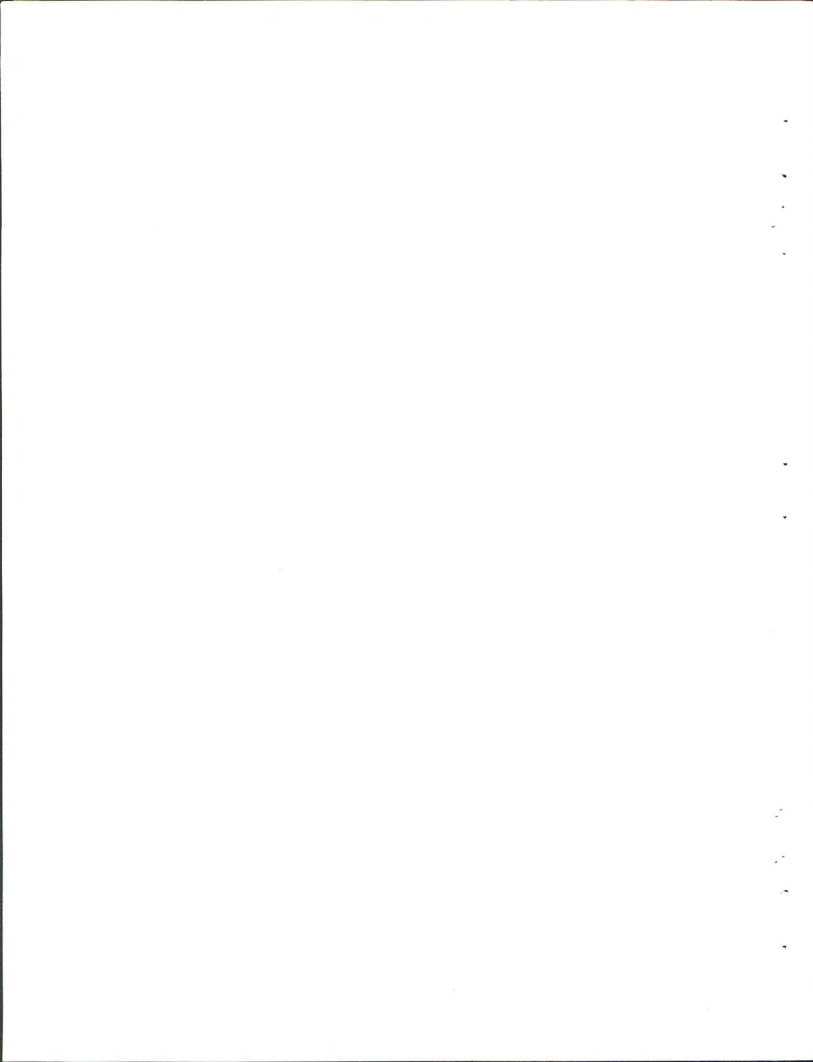


GENERAL APPENDIX



GENERAL APPENDIX I

Summary of Results of State Land  
Recreation Use Questionnaire Sent to  
Fifteen Western States.



## GENERAL APPENDIX I

Results of Questionnaire mailed to other states with trust land.

Questionnaires were sent to Alaska, Arizona, California, Colorado, Idaho, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wyoming. New Mexico, Oklahoma, Texas, and Utah did not reply. Nevada has sold all trust land. Some states did not answer every question.

### A. Public Use of State Lands-

#### 1. Is the general public allowed access to all or some State Trust Land?

1. Alaska: "Once leased, access would be subject to lessee's concurrence. No access is prohibited on unoccupied Trust lands, as a general rule."
2. Arizona: "No"
3. California: "All access, use or occupancy must be specifically authorized by the State Land Commission."
4. Colorado: "Lessee may prohibit public access except on a 71,000 acre tract known as the Colorado State Forest."
5. Idaho: "Qualified access - the general public is permitted access to extensively managed lands i.e., grazing or timber unless such access conflicts directly with licensed uses."
6. Nebraska: "Lessee's through their agricultural leases, control access to such leases."
7. New Mexico: Although New Mexico did not respond to the questionnaire, a 1969 report entitled The New Mexico State Land Office, published by The Dikewood Corporation, Albuquerque, New Mexico, indicates that trust lands are open to licensed hunting and fishing only.
8. North Dakota: "No. Tenant is in full control at present."
9. Oregon: "All state school lands are open to the public."
10. South Dakota: "Lessees control access."
11. Wyoming: "All land is open for hunting and fishing. Person using land must notify lessee that he is on the area."

2. If so, how is the trust compensated for such use?

1. Alaska: "No compensation."
2. California: "All allowed uses are so allowed in consideration of fair market value."
3. Idaho: "No compensation."
4. New Mexico: The Fish and Game Department leases access rights for hunting and fishing.
5. Oregon: "Only those public uses which damage, consume or foster private profit require compensation."
6. Wyoming: "No compensation received."

a. Is there a general recreation license for access to State Trust Land? All states replied - "NO."

b. Does your state sell access rights to a Fish and Game Department?"

1. Alaska: "This type of access is generally granted without compensation."

2. Arizona: "No"

3. California: "Yes, the sale is at fair market value."

4. Idaho: "Discussions are underway to establish a standard leasing procedure for lands required by the Fish and Game Department for access and for wildlife habitat."

4. North Dakota: "No"

5. New Mexico: As stated above, a report indicates that the Fish and Game Department leases hunting and fishing rights on New Mexico trust lands.

6. Oregon: "No"

7. Wyoming: "No"

3. Is the lessee's consent necessary before the public may enter the land?

1. Alaska: "Yes"

2. Arizona: No answer, but one could assume a "yes" answer because the public does not have access rights.

3. California: "If the State Land Commission has issued a lease, other users must make arrangements for the use of the leased lands."

4. Colorado: "Yes - - except State Forests."

5. Idaho: "No, but lands may be posted against general access upon permission of the State Land Commissioner."
6. Nebraska: "Lessees control access."
7. New Mexico: "The statutes declare that anyone other than a lessee who enters upon or uses state land without permission of the Land Commissioner, is in trespass and subject to fine or to imprisonment in default of the fine," The New Mexico State Land Office, Dikewood Corporation, Albuquerque, New Mexico. However, see answer to question A-1 and A2."
8. North Dakota: "Yes, if it is posted by tenant."
9. Oregon: "Not at present. Some types of leases which require considerable development expense will eventually need to exercise controls."
10. Wyoming: "No consent necessary, but lessee must be notified for hunting use."

a. Are lessees allowed to charge any access fee?

1. Alaska: "No"
2. Arizona: "No"
3. California: "A lessee may make charges for access and conveniences made available to the public."
4. Colorado: "No - - strictly prohibited and cause for cancellation of a grazing lease."
5. Idaho: "Only if their lease is issued for the operation of a concession-type business."
6. North Dakota: "In most cases this is not the case."
7. Oregon: "Definitely not."
8. Wyoming: "No"

4. How is the responsibility for littering, vandalism or fire managed?

1. Alaska: "Littering and vandalism is subject to local law enforcement activity. Fire is handled through our Forest Warden Program."
2. California: "All maintenance responsibilities are the duty of the lessee. The state requires surety bonds to insure performance."
3. Colorado: "Littering is the responsibility of the lessee. Fire protection is provided by the Colorado State Forest Service."

4. Idaho: "The responsibility rests with the lessee."
  5. Oregon: "It is against a specific law as well as protected by civil property rights. Enforcement is seldom needed because of the location of school lands."
  6. Wyoming: "Lessee is to report all littering to Land Office and assist in prevention according to direction of Commissioner. In the event of fire, lessee is responsible to prevent and to help control it."
5. Is it possible to estimate the amount of staff time and funds required to manage recreational uses?
1. Alaska: "Our recreational uses are handled by the Division of Parks within the Department of Natural Resources."
  2. Arizona: "No-no basis."
  3. California: "School lands require about 1½ man years per year. Sovereign lands require about 4 man years per year."
  4. Colorado: "Recreation use of Colorado State Forest is a major problem. It requires us to keep a Forester there full time and while recreation management is not his prime duty, it takes up most of his time."
  5. Idaho: "No, but the (cost-benefit ) ratio is very favorable."
  6. Oregon: "It is a marginal activity in our agency."
  7. Wyoming: "Not at present."
6. Are there any provisions in grazing and agricultural leases relating to recreation?
1. Alaska: "Grazing and agricultural leases prohibit the denial of access for hunting and fishing unless specific permission is obtained from the state."
  2. Arizona: "No"
  3. California: "No"
  4. Colorado: "No --- our lease does, however, reserve the right to put the land to multiple use by granting subsidiary leases upon said premises or any part thereof at any time, for any purpose other than the rights specifically granted, provided such subsidiary leases do not prevent the reasonable exercise of said rights and privileges. Recreation could be one use."



5. Idaho: "The lease reserves the public right of access for hunting and fishing."
6. North Dakota: "None."
7. Oregon: "Yes--see attached copy."  
The following is the provision referred to:  
"The lease holder, or tenentry right, leased and let by this lease, is for grazing purposes only, and all other rights are reserved to the state."

#### B. Commercial Recreation Developments-

1. Are any State Trust Lands leased for the purpose of commercial recreation developments?
  1. Alaska: "Yes"
  2. Arizona: "Yes"
  3. California: "Yes"
  4. Colorado: "One lease proposed."
  5. Idaho: "Yes"
  6. Nebraska: "One 320 acre tract to a Commercial Recreation Development Company."
  7. North Dakota: "No"
  8. Oregon: "Such leasing is under consideration."
  9. South Dakota: "Such leasing is under consideration."
  10. Wyoming: "Yes"
2. If so, what type and number of commercial recreational developments:
  1. Alaska: "--Generally in connection with the operation of a public recreation area, i.e., concession stands, etc."
  2. Arizona: "Small number; speedways, glider fields, trail-bike grounds, public parks, etc."
  3. California: "There are currently in excess 3,000 leases in existance."
  4. Colorado: "Proposed lease is for a resort with lodges, stores, garages, condominium buildings and recreational facilities."
  5. Idaho: "Six winter sports compounds, one marina, and one resort."
  6. Oregon: "Two trailer parking sites."
  7. Wyoming: "Two for skiing."

3. How is the rental for commercial recreation leases determined?
  1. Alaska: "These leases are generally negotiated annually."
  2. Arizona: "Annual percentage return on appraised worth of land being used."
  3. California: "6% of fair market value annually."
  4. Colorado: "By negotiation."
  5. Idaho: a. "Flat rate based on 6% of land value."  
b. "Flat minimum plus a percent of gross based on kind of business."
  6. Nebraska: "Only calculated as to the highest agricultural rent that could be charged in the area."
  7. Oregon: "Appraised plus negotiation. Bidding, if utilized, will be conditioned for award to the best (environmental, economic, etc.) plan development and management."
  8. Wyoming: "Based on appraised values and comparable leases on private and federal lands."
4. What is the term of commercial recreation leases?
  1. Arizona: "Variable-up to 10 years."
  2. California: "Up to 49 years, with rent review at five-year intervals."
  3. Colorado: "The one proposed lease is for 50 years. Rental review at five-year intervals."
  4. Idaho: "10 years-limited by the constitution."
  5. Oregon: "Flexible."
  6. Wyoming: "Up to 25 years."
5. Is the State's interest in such development limited to the grant of the lease itself, or is there further contribution by the state during the development stage itself?
  1. Alaska: "The recreation facility is normally constructed and maintained by the state."
  2. Arizona: "Limited to lease grant."
  3. California: "The land lease is the extent of the State Lands Commission's contribution."
  4. Colorado: "Limited to lease terms."
  5. Idaho: "At present time all development is done by the lessee."

6. Oklahoma: Although Oklahoma did not reply to the questionnaire, previous correspondence with the State Land Office in Oklahoma, indicates that this state constructs and manages large resort hotels on state land.
7. Oregon: "The state will participate in and exercise final approval of development."
8. Wyoming: "All plans of development must be board approved."

C. Cabin Site Leasing-

1. Does the state lease cabin sites on State Trust Land?

1. Alaska: "Yes"
2. Arizona: "No"
3. California: "Yes"
4. Colorado: "No"
5. Idaho: "Yes"
6. North Dakota: "No"
7. Oregon: "Such leasing is under consideration."
8. South Dakota: "No"
9. Wyoming: "Yes"

2. Is there any estimate of the number of cabin sites leased?

1. Alaska: "2,346 active leases."
2. California: "There are over 100 cabin site leases on both school and sovereign lands."
3. Idaho: "606"
4. Oregon: "Between 12 and 20 only, at this time."
5. Wyoming: "23"

3. How much income is generated by this type of use? What are the rentals?

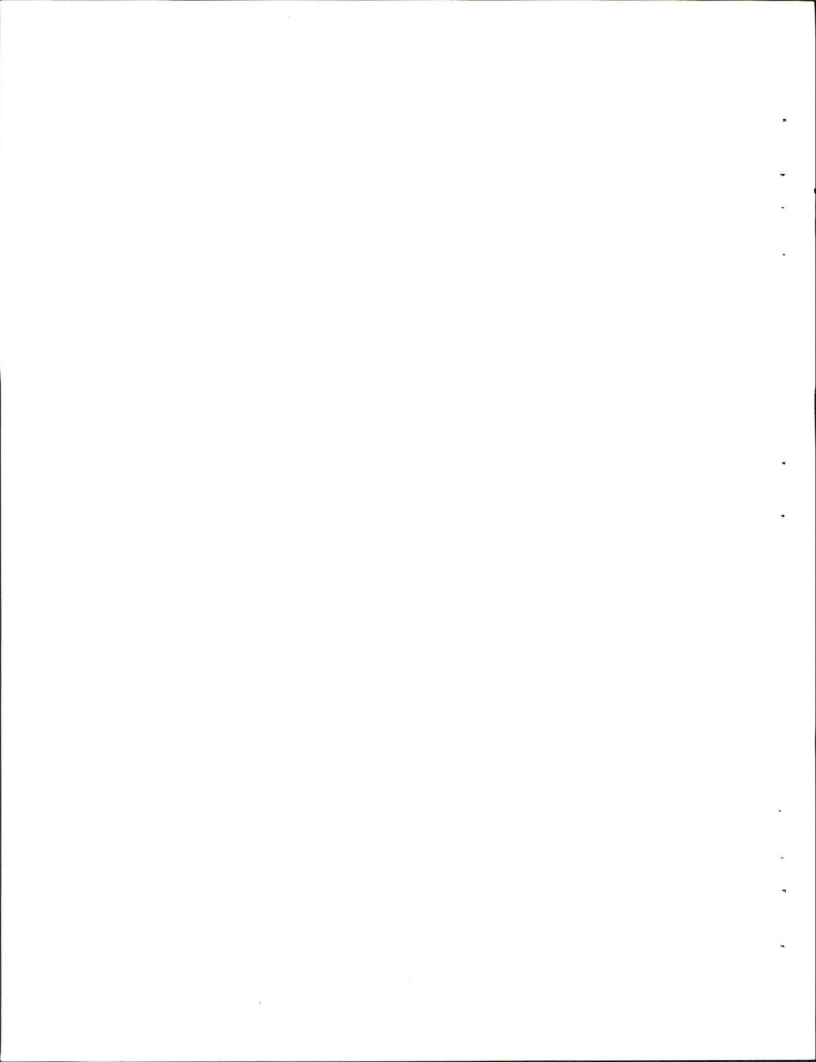
1. Alaska: "\$152,746 has been derived from these leases to date."
2. California: "Minimum rental for a cabin site is \$65 per year. The total annual rental from cabin sites is unknown, but minimal."
3. Idaho: "Fiscal Year 1972 - \$65,687.11. Class I (waterfront) - \$125.00 per year. Class II - \$96.00 per year. Class III - \$62.00 per year. These rates do not reflect market value and are set by the Land Board."

4. Oregon: "Unknown."
  5. Wyoming: "Varies from minimum of \$50.00 per year to \$320.00 per year."
5. Has this use been found to be a viable means to generate income for the state, or have problems with vandalism, property damage, management costs or interference with the rights of grazing and agricultural leases been so great so as to greatly reduce the benefits to the trust?
1. Alaska: "This program has realized a significant income to the state without significant problems."
  2. California: "This has not been a good means of generating revenue due to the great amount of lease service necessary. (Lease service includes assignment, amendment, collection and policing)."
  3. Colorado: "We considered cabin leases but in our opinion, the policing would be too costly in terms of management."
  4. Idaho: "Most viable - use conflicts can be avoided through careful planning by the agency."
  5. Wyoming: "Have just commenced opening areas for this type of leasing. Appears to have a high return. Initial state investment could be high, depending on type of improvements needed for area prior to leasing."

## GENERAL APPENDIX II

### Summaries of Discussions Held With Citizens on Recreational Use of State Trust Land.

The following summaries attempt to bring out the major feelings and opinions of citizens on the recreation use of state land. The summaries are the result of informal interviews conducted by the author during the summer of 1972.



August 1, 1972

D.H. Siewert  
(Associated with State business organization)  
Helena, Montana

1. 25 year recreation lease

- A. Any substantial capital improvement would require a lease term of longer than 25 years. The lease term must be long enough to allow for full depreciation of improvements.
- B. 25 year lease with an option renewal for another 25 years, or ten year options would help to eliminate this problem.
- C. There is potential for experimentation here. The State could get competitive bids under varying lease forms. Bids depending on whether the lessee will have full control of the land, or if free public access would be permitted.

2. Cabin site leasing

- A. This is a legitimate use of State lands which would be strongly supported by Mr. Siewert; but only if there is very careful planning and consideration by the State.
- B. Free public use of the area will probably be necessary in conjunction with any cabin development.
- C. To have a marketable product the State will need some flexibility. There may not be a need for strict set backs or common designs. Building covenants set forth in the lease might be sufficient to ensure compliance.

3. Public Access

- A. A system of user fees might be established on both private and public land. The State might adopt a sort of Golden Eagle Passport for use on public lands. The income could then be appropriated among the agencies involved. The State lands are a valuable resource and anyone using the land should pay for such use.
- B. The value received for grazing or agriculture should only be lowered in proportion with the harm incurred as a result of public access.  
This should be an economic determination.
- C. If the State lands are to be opened generally to access, notification before entering the land, rather than the necessity of consent, should be sufficient.

4. Fee hunting

- A. There are problems with fee hunting in Montana because of the high percentage of public lands. But, as more land is posted greater pressure is exerted on the public lands. The Land Board should probably not encourage this by instituting fee hunting on state land. A "passport" to public lands might be sufficient.
- B. People would probably be willing to pay for a managed resource.



July 6, 1972

Mons. Teigen - Montana Stockgrowers Association  
David Smith - Montana Woolgrowers Association Helena

1. 25 year recreation lease

- A. The major point of emphasis was that such a lease must be a joint undertaking.
- B. Any development on State lands should be a joint venture with the surface lessee. In some areas, recreation potential is recognized by the lessee, he may join the state in development.
  - (1) Problems: What if the lessee wants to develop his own spots?
  - (2) Possible opposition of private enterprise.

2. Cabin site leasing

- A. This would have to be an attractive proposition to interest most lessees because of the nuisance problem involved, although cabin sites would be safer than a franchise camping development or a public campground.

(1) Factors to be considered:

- a. The type of development.
- b. What about the general public, this would be an expensive proposition?
- c. If turned over to the lessee, would his share be sufficient?

3. Public Access

- A. Effect on the value of the lease?

- (1) This would depend on what was involved. Any change in access policy should be negotiated on an even basis without the state making demands.
- (2) Problem: If recreation is seen to be a value, everyone might be convinced that value should be received for providing access. Forced opening of state lands might eliminate the land which is now open.
- (3) There should be hunting by permission only, although Mr. Teigen would suggest that ranch name be on the sign.

B. Landowner Liability

- (1) So long as the lessee is responsible for damage to the land, you can't really stop him from posting to protect his leasehold.
  - (a) Can't compare state lands to National Forests. There, the land is consolidated, fenced and there is known protection.
  - (b) The State issues a lease rather than a permit. The lessee is responsible for fires. Legislation on statewide fire control might be unnecessary at this time, although fire districts may be desirable in the Western parts of the state.
  - (c) If access is allowed, there must be some legal protection for the lessee.

C. Fee Hunting

- (1) It would be up to the State to determine how much to charge. This might discriminate against local residents, although through provision of some camp areas, sanitary facilities on a day-use charge basis, some land might be opened.

July 19, 1972

Mr. Joe Renders  
(Associated with Montana Grain Growers Association)  
Public Relations Associates, Great Falls

1. Recreational development of State land

- A. The State should consider how much income is generated by the entire trust, not each specific parcel. If compensation to the trust is viewed as the income potential from the entire trust, some sections of land might be set aside for free public use as wild or primitive areas, historical sites, etc. while income from the others could be increased through income-producing recreational developments.
- B. The State lands should be developed by recreationists for the purpose of recreation. This should not be turned over to Fish and Game, rather the Land Department would have to expand to meet the need, although this might raise some opposition from the private recreation development sector.

2. Cabin site leasing

- A. If State land is going to be used for recreation purposes, it must be accomplished under a planned program. Because of growing population pressures and the great utilization of cabin sites in Montana this would be a viable means of producing revenue, for in excess of grazing income.
- B. Mr. Renders believes that the pro-outdoors environmentally oriented lessee would not abuse this property and the management and supervision required of the State would not be overly burdensome. The lease rate should be in accordance with the recreational value of the land.
- C. If developed by the State Land Department a better job will be done than if a commercial developer looking only to big profits is franchised by the State.

The State should maintain a maximum amount of control over recreation developments.

D. Management of cabin sites:

- 1. The farmer or rancher lacks the proper background to manage

2. To employ one cabin lessee as supervisor might lead to problems with the other lessees.
3.
  - a. Recreation agency should be an arm of the State Land Department. A supervisor could be hired to work in conjunction with a cooperative organization of cabin site lessees.
  - b. The cooperative could deal with problems of structural deterioration from non-use, winter vandalism and to help find new occupants if lease is not renewed.
  - c. The State should have sufficient power to withdraw the lease at any time.

### 3. Public Access

- A. Public access should be allowed to State lands. Although access to croplands would not be feasible, grazing rates are so low that public access could not lower the lease value.
- B. If the rancher was paying full value for the lease then public access might create some reduction in the value of his lease. Unless he pays full value, the lessee should not have the privilege to restrict access.
- C. Notification rather than consent of the lessee should be sufficient to allow access; but if full public access, or a recreation development is on the parcel, the lessee should be relieved of liability unless he was the negligent party.
- D. User fees would be legitimate if not profit-making. These should cover maintenance and the cost of providing access.

### 4. Fee - Hunting and Fishing

- A. A fee should not be charged for hunting and fishing where only State land is involved. Fees would probably not work because of the feeling of many Montanans that to hunt and fish is their right.

August 3, 1972

Ole Ueland - Department of Natural Resources  
Pete Jackson - Department of Natural Resources

## 1. Public Access

- A. Land owner liability - responsibility for fire control is the major stumbling block to public access to State land.
- B. A permit system might be preferable to a system of recreation leasing. If access is allowed, the income from permits should go back into improvements on the lease. The plan has to include improvement of the resource as well as to be based on sound conservation principles.
- C. There is a need for certain different standards for various kinds of recreation activities. In some areas, permits might be rationed by the State. In others, the lease rate should be cut to allow the lessees to hire a warden. This must be a multi-purpose determination. But, the primary or dominant user of the parcel must be of prime concern to the State. On some parcels the dominant use might be recreation, but this must be determined by who is on the land most of the time.
- D. In some cases the rancher must request the right to withhold access to the State parcel. A permit system should insure control and planning as well as to aid in pinpointing responsibilities for damage.
- E. There is no real reason for this to be an insoluble conflict between the rancher and the recreationist. Grazing seasons and recreation are not mutually exclusive. Easements for summer homes, etc., might be arranged which would not be injurious to livestock forage and management plans. The State needs the assistance of a Range Management Specialist in this determination. These are technical problems.
- F. There should be an appraisal of what the land is worth for all uses minus the cost of providing for multiple use. Perhaps the legislature should also reappraise the necessity to limit agricultural and grazing leases arbitrarily to ten years.

## II. Recreation Leases

- A. Recreation leases at 25 years is unequitable to 10 year agricultural leases.

August 28, 1972

Ted Lucas, Highwood  
(Associated with "Land-Owner - Recreationist Committee"  
of the Montana Stockgrowers Association)

1. Recreational Development of State Land

- (a) State land is held in trust for the school system of Montana. Recreationists do not have free rights to this land any more than does any other user.
- (b) The U.S. Department of Agriculture is urging landowners to become involved in recreation and to charge for it. Where State land might be included in such a program, the State should be fully compensated for such use.
- (c) If in the future the State attempts recreational development on State school lands, it should be done on a very limited trial basis. Costs could well exceed the returns.

2. Public Access

- (a) Access by the public should not be forced upon those leasing State lands. Recreationists must conduct themselves so that most land, private and otherwise, is open to them. They must learn to police themselves and to pay for such additional policing as is required for good landowner-recreationist relations.
- (b) At this time the recreationist is not paying to compensate the State trust. If it ever becomes the lessee's duty to allow public access, the value of the lease must be lowered for the lessee and the recreationists must pay their share.

3. Cabin Sites

- (a) State land is scattered in small parcels. Cabin sites or other recreational developments should never be attempted without full agreement with the surrounding landowners. Otherwise, such developments could very well be just a cancer within a ranch or community.

could provide four or five alternative designs and a 20-25 year loan for building costs. This would open cabin leasing to a wider range of Montanans. A drawing might be held among applicants to determine who gets privilege to build.  
Problem: What about the requirement of competitive bidding?

#### 4. Public Access

- A. The public does not have the general right to enter on school land, because of the nature of the land trust. If the State tried to give the public access, this might be considered giving up an interest in the land without compensation. It may not be constitutional to provide for public access without recouping some value.
- B. If access easements across private lands are to be provided, the severance effect of such must be considered. To be justly compensated, there must be provision for protection to the rancher in regard to access.  
The State could condemn access to its land.

- C. Few hikers or fishermen present problems to the ranchers. The problems concerning hunting are the same whether on deeded or state land.  
In areas under irrigation, where cattle are grazing, following a wet snow during hunting season, etc., the rancher should be able to impose on access.  
Mr. Johnston allows hunting with permission and feels that it might help to have the ranch name and location on the sign when land is posted. The Fish and Game's "Three C" program seems like a good approach. The hunter must be educated in conservation know-how.

#### 5. Fee Hunting

- A. This proposal has been studied and a paper is available through the Extension Publications Office in Bozeman.
- B. If property taxes are increased, the rancher will want to recoup his loss and fee hunting and fishing might be an outgrowth of this.  
The rancher is providing the wildlife habitat anyway.  
Problem: Fee hunting will meet with extreme hostility because of the general public feeling that hunting should be gratis.
- C. The lease of hunting rights might be done individually without any statewide program

#### 6. Commercial Recreation Developments

- A. There should be provisions to handle possible spillover to adjoining land, so that such land is not adversely affected.



July 18, 1972

Mr. Fred Johnston  
Attorney, and State Land Lessee, Great Falls

1. Recreational Development of State Land

- A. The State Land Board should begin to make some decision whether it should go into the recreation business on trust lands. The State should remember that both the resource itself and the contiguous area should be preserved.
- B. If the rancher is in a place where people are recreating, he may have to go into the recreation business because of rising land values and property taxes and because of the pressure on the operation.
- Problem: To be successful a recreation development has to be reasonably expensive - who will bear this cost?

2. Recreation Lease to Fish and Game

- A. Such leases must meet the requirement of competitive bidding. If a blanket access lease to all state lands were given to Fish and Game, the State should receive full compensation.
- This might result in a reduction of value of the lease to the agricultural or grazing lessee. If a tract is carved out of his lease for recreation use, the impact of this development on neighboring tracts be considered.
- Should general access be allowed, lessee should have the right to close areas to access when recreational use would disrupt operations or harm the resource.
- B. Perhaps campground areas, picnic areas and fishing access sites should be sold to Fish and Game. Competitive bid procedures for such sales would still have to be met in order to insure the highest return to the trust.

3. Cabin Site Leasing

- A. Cabin site development would probably not pose as great an administrative problem as public campgrounds. But, the impact of such development on the resource should not be negative. There should be a high building standards for the cabins, and no trailers should be permitted.
- B. The State might lend money to individuals to build cabins in accordance with the desired standards. The State

as cabin leasing, it will be extremely difficult to change the policy even if it is clearly detrimental to the public benefit.

- B. The State should not allow a private party to manage the State land for a profit at the public expense.
- C. Even if cabin leasing is a means to open up new routes of public access to recreation resources, access just for the sake of access is not enough to justify cabin sites.

#### 4. Public access

- A. There should be a policy formulated at the grass roots to provide for reasonable public access. This would require active management by the State and provision should be made for access in an Organic Lands Act. The Act should be modified over time.
- B. A policy of access to state lands for recreational purposes should be incorporated into a broader policy of management objectives for such lands. I'm aware that such a policy currently exists but as I stated previously, changes are needed (permission) to account for new public concern and interest in policy decisions.

The access policy should be selective taking into consideration possible conflict with other values. Unrestricted public access could be more detrimental to society than completely restricted public access to state trust lands.

August 3, 1972

Bill Cunningham  
Department of Natural Resources

1. Recreational development of State land

- A. The State lands are becoming increasingly valuable in terms of the need to evaluate the land to determine its intrinsic value in terms of land capability. There is a need to integrate other uses than simply agriculture and grazing. The land should be managed for the optimum public benefit which cannot be measured by maximum dollar revenue in the short run.
- B. There should be a legislative mandate, an Organic Lands Policy Act, indicating broad policy objectives of State lands. Such legislation could be oriented to maximize the social and public benefits afforded by a more generalized use of land.
- C. If it is necessary to attach a monetary value to recreation to insure adequate compensation to the trust, the economic value of a parcel so utilized can be determined. The price of a "recreation-man day" should equal administrative and maintenance costs plus the consumer's surplus.  
Problem: Does this value have to be directly attributed to an increase in the general fund, or can the general public benefit be evaluated through a legislative mandate which reflects the needs and desires of people.
- D. The State Land Department must begin to manage its lands in line with broad policy objectives to be set by the legislature.

2. 25 Year recreation lease

- A. Mr. Cunningham favors the institution of such a lease, but would require that there be continued control over developments by the Land Board. A development policy for leased state lands should be promulgated by the Land Board.

The use of some parcel to improve wildlife habitat, etc., would be a valid use of the land, but there is still need for some affirmative mandate indicating what uses are suitable and which are not. Ideas might be formulated from House Bill 7211, proposed by the House Interior and Insular Affairs Committee.

3. Cabin site leasing

- A. The Land Board must ensure that its policies are in the public interest. If economic dependence is developed on a policy such

5. Landowner liability

- A. Under the new Constitution, everyone will have to assume liability. Now, the state cannot be sued for more than it is insured.
- B. If recreation development is a joint venture, the lessee could take on costs of insurance; but the State could probably still be sued as landowner.

July 13, 1972

Mrs. Harold A. Fryslie, Representative  
Montana Dude Ranchers and Outfitters  
U.S. Ski Association, Northern Division, Bozeman

1. 25 years recreation lease

- A. Some dude ranchers would be very willing to go along with this type of arrangement. Although 25 years probably would not cover a life-time operation, a 25 year lease with an option to renew could be sufficient.
- B. Recreation tourism is the number 3 industry in Montana, and will probably soon be number 2. Cowboy vacations are becoming a fad, but because of new Forest Service regulations on horses, trail bikes, snowmobiles, the small dude rancher will need a base for his operations.
  - (1) On lease procedures the State should make the qualifications and restrictions enough that people would only enter into agreement if a serious venture was contemplated.
  - (2) Because of environmental problems, no development should be acted upon until a feasibility impact study has been completed by the State as to commercial and ecological ramifications.
  - (3) Problems: What if the impact is greater than that contemplated? How will recreation areas be policed?
  - (4) State would need a recreation agency within State Land Department to deal with leasing procedures. Contract attorney, coordinator, people to make impact studies.
- C. Lease fee could be based on per guest, per head of stock yearly rate. Or, a dude ranch could be assessed 1% of gross for the first few years of operation; 5% after five years. Then, at five year intervals, the State could reappraise and re-evaluate the value of the lease. If the ranch proves a losing operation, it should be the lessee's responsibility to find a replacement.
- D. Planning and land use study of State lands could be very important because with State cooperation, a more powerful voice concerning use of adjoining federal lands is possible. This could aid in expansion of ski area facilities or trail systems. There is a need for city and county cooperation in land use planning.

## 2. Recreation developments

- A. Feasibility for cabin site leasing should also be determined by environmental impact study. What is the capacity of the resource, what type of physical plant, right of way?
- B. Lease provisions should be entered through negotiation.
- C. Private campgrounds can only make money through volume. This causes a great impact on the land.  
One possibility would be for the State to lease to KOA, etc.; then they in turn could set up franchise.

## 3. Landowner liability

- A. The franchise agreement would have to include enough for liability that the State would assume if increased public access is allowed. The rancher would still be liable for his negligence, and if a joint venture, lessee would accept responsibility for possible injury or damage.

## 4. Public Access

- A. Fish and Game should assess an extra \$5.00 for access rights to state trust lands.
- B. Outfitters pay for the lease of hunting area rights on private land in some cases, the State might become involved in this.
- C. Access could be provided by easements and possibly toll fees.

## 5. Littering, vandalism and fire

- A. Funds should be diverted from organized recreation itself to subsidize a man from the sherriff's department to police recreation areas.
- B. Policing should be accomplished by people trained in this area.

July 18, 1972

Mr. Dan K. Mizner

Montana League of Cities and Towns, Helena

1. 25 years recreation lease to be used by cities and towns for park purposes

A. Since parks developed by cities and towns are open to everyone including non-city residents, the state and local governments should look to joint funding so that city residents will not have to bear tax inequities. Right now the U.S. Bureau of Outdoor Recreation provides funds on a 50/50 cost share with local government.

B. What is the availability of the state parcel of land?

If the parcel of land is close to a city, Mr. Mizner would suggest that it be tentatively set aside, then the state and locality can study the means of funding.

1. In return for use of the parcel, the local government might provide management and supervision.
  2. Counties might also be interested in such an arrangement.
- C. There is a need to devise arrangements for maintenance and upkeep. Maintenance funds should also be matched by revenue sharing, or a grant development program with the state or federal government.

2. Cabin site leasing

A. There should be provision for adequate public use in conjunction with cabin site leasing. There might be beaches or public picnic grounds as well as cabins.

Some places, however, might only be adequate for a few cabins and too expensive to provide for general public use. Thus, the state might want to develop cabin sites on one parcel while at the same time providing public areas on another.

B. Questions of accessibility, and who will maintain access are vital to cabin leasing. In some cases the lessee might maintain and build the access road.

C. Alternatives to management of developments:

1. By one of the cabin site lessees - payment might be to provide

site for free, but any time the manager sells out, problems might arise.

2. By the lessee holding the grazing, agricultural lease on the parcel.
3. By a supervisor hired by the state.

### 3. Public access

- A. There should be designated access to state lands. The general public should not be precluded from the use of the land except when it is necessary to the lessee's operation. If he is grazing, etc., there might be some limitation at that time.
- B. Since access is usually over the best portion of the land, river bottoms, etc., there might be some effect on value of the lease; rentals are so low at this time that rentals probably should not be lowered.
- C. Management problems in regard to fire hazard may differ so much that the state should take a stricter look at the management facilities available to fight fire.

### 4. Commercial Recreation Developments

- A. Dude rancher: What will be the rights of the lessee? How will these be distinguished in the lease? Will the hunting rights on the parcel be his exclusively?



July 26, 1972

Mr. Donald Aldrich  
Wildlife Federation, Missoula

1. Recreational development of State land

- A. The Wildlife Federation is opposed to the disposal of any public lands. The land should be retained and exchanges should be made in order to consolidate the land into more manageable units.
- B. Mr. Aldrich supports capability studies. The State lands should be managed according to their capabilities and recreation possibilities should be included in this determination.
- C. Any blocks of State land suitable for use as parks should be turned over to the Parks Division of Fish and Game.

2. Lease to Fish and Game

- A. Fish and Game could lease areas for recreation use, and also for the purpose of habitat improvements. Areas could be left as wet lands or rough country to be managed for the benefit of wildlife. This type of management must be compensated, and it would be conductive to multiple use. Grazing could still be permitted in the area, but Fish and Game could determine at what time of the year.
- B. The grazing lessee must be relieved of liability for fire under these circumstances.  
Statewide fire control districts would be of assistance in this problem, as well as to the rural community involved.

3. Public Access

- A. State lands should be open to public access. Some croplands might have seasonal use when such use would not be detrimental to the lessee. Special livestock management areas should also be open to the public only on a seasonal basis.
- B. Recreationists should begin to report people who cause damage. This should be a citizen responsibility and cases should be taken to court.  
A requirement of signed permission to be on the land would be valid if some type of map or district showing land ownership and open lands is produced. In the Malta area the ranchers and public agencies have organized and identified lands to be open and closed during hunting season without regard to ownership. The Wildlife Federation could help establish more of these organizations by producing maps for sale to sportsmen, sportsmen would then know who to contact for permission and where to go.

This might be a good 4H project throughout the State. If the lessee is to obtain value for providing recreation, the manner in which such compensation is received would be of importance.

1. Payment for management of lands to benefit wildlife would be legitimate.
2. Grazing lease fees should be based on fair market value, with allowances for public use.

4. Cabin site leasing - Commercial Recreation Development

- A. Both are restrictive uses that would not permit full public use. Any special use permit that restricts use by the general public should be avoided. Cabin site represent a blockage to public use.
- B. Cabin sites should be developed on private land.

July 12, 1972

Stan Burger - Farm Bureau Federation      Bozeman

1. Interest in recreation development on agricultural land

A. As farmers begin looking for other income generators, recreation developments are a possibility. The farmers, however, will not want to be burdened with a recreation facility just to retain a lease on state land.

B. Important considerations are:

- (1) What would be the role of the state in these developments?
- (2) Problem of planning and zoning.

If the development just reduces the agriculturist down to the status of manager, he would probably not wish to become involved. Unless he has a lot of state land, he could open up the same sort of development on his own land.

C. The commercial agriculturist wants to have room to expand his operation, increased land values due to recreation development and resulting high taxes may reduce opportunities for expansion. The Big Sky development has increased land values from \$400/acre to \$750/acre in the Gallatin Canyon.

2. 25 year recreation lease

A. The individual lessee must have more than a passing interest in this type of arrangement and it should be a joint venture. There should be a strict contract between the agriculturist and the state. The state would be able to get matching funds from the Bureau of Outdoor Recreation.

B. As a joint venture, the State could ask the individual lessee to invest in the development as a partner. In return, he could retain the use of the State land for a certain number of years and take a profit share. Thus, lessee would get an actual return on his investment as well as being compensated as manager. The state would want to make sure it could get out of this arrangement. If the management was not working out, the State could buy out the individual's investment.

C. The state's return from such a development might be based on a percentage of gross profits as well as the value of land appraisal. This might be on a sliding scale with appraisals coming after the first year, third, fifth and every fifth year thereafter.

- D. If this was a lucrative enough venture, the contract agreement could include maintenance. If there has been damage through vandalism, or fire, the state might reimburse the individual after he has proven he has explored all channels of recovery.

### 3. Public access

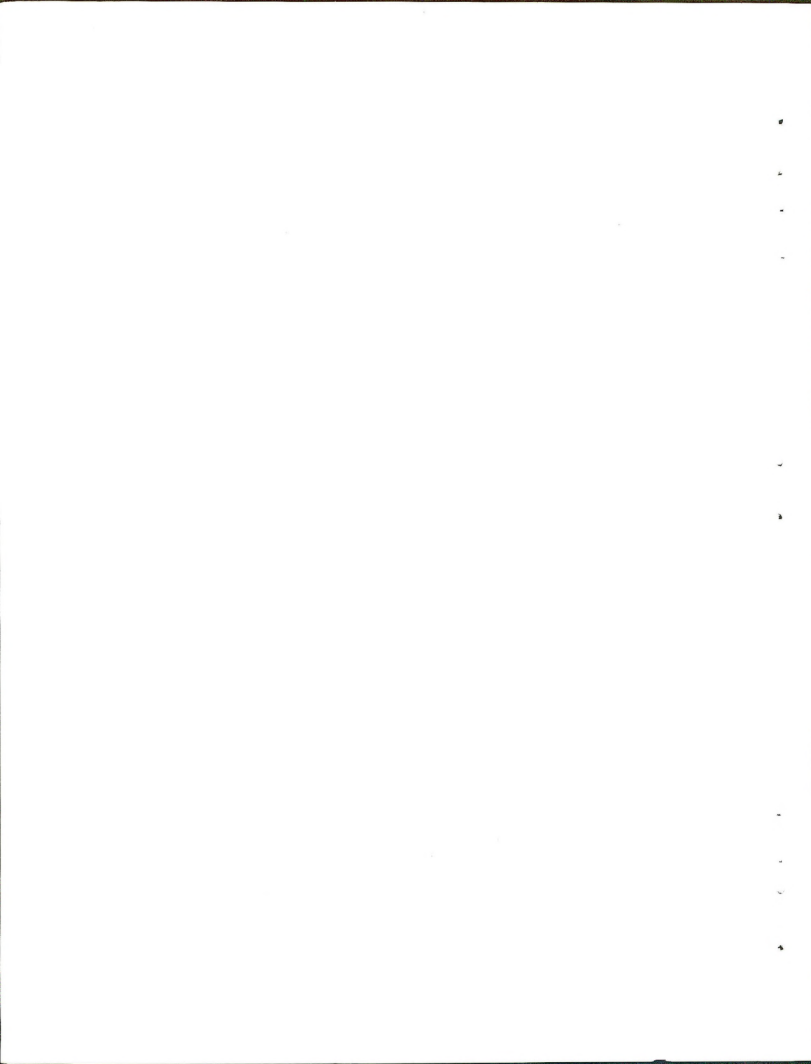
- A. The state should not attempt to force access to state land over private land. If there are recreational needs, the landowner should be compensated for the provision of access.
- B. The purchase of easements for access roads is the practical means to get across private lands. If the access is only to the river, and no abuse to adjoining land occurs, provision of access will be no problem. The state must emphasize that it is a privilege, not a right, to lease state land. In turn, the increased revenue from recreation use will keep taxes for schools down.  
In terms of policy, however, most agriculturists tend to resist the increased management of land by the lessor.
- C. There has to be some restriction on access, the farmer or rancher has to be able to pinpoint responsibility for damage. Whether the state remunerates him or not, his consent should be necessary before public access is allowed.

### 4. Fee hunting and fishing

- A. Some ranchers have trout farm operations; they provide only fishing, however, no cabins or other developments.
- B. Hunting and fishing districts:
- (1) Ranches are getting larger and more recreationists want to use the land every year, thus it is harder to police the ranch operation. It might be an advantage to have another organization, such as Hunting and Fishing Districts, to handle the policing but, at this point, many farmers or ranchers simply don't want to be involved with another organization.
  - (2) Two to five years from now such districts might work. Having someone at the gate would require extra help but if each hunter signed a log on entry, this might help to delineate responsibility.
  - (3) Enforcement by a private group might lead to problems, but Fish and Game would have to increase police effectiveness to take responsibility over a district.

GENERAL APPENDIX III

The Resource Development Internship Program



### GENERAL APPENDIX III

#### The Resource Development Internship Program

The preceding report was completed by a WICHE intern during the summer of 1972. This intern's project was part of the Resource Development Internship Program administered by the Western Interstate Commission for Higher Education (WICHE).

The purpose of the internship program is to bring organizations involved in community and economic development, environmental problems and the humanities together with institutions of higher education and their students in the West for the benefit of all.

For these organizations, the intern program provides the problem-solving talents of student manpower while making the resources of universities and colleges more available. For institutions of higher education, the program provides relevant field education for their students while building their capacity for problem-solving.

WICHE is an organization in the West uniquely suited for sponsoring such a program. It is an interstate agency formed by the thirteen western states for the specific purpose of relating the resources of higher education to the needs of western citizens. WICHE has been concerned with a broad range of community needs in the West for some time, insofar as they bear directly on the well-being of western citizens and the future of higher education in the West. WICHE feels that the internship program is one method for meeting its obligations within

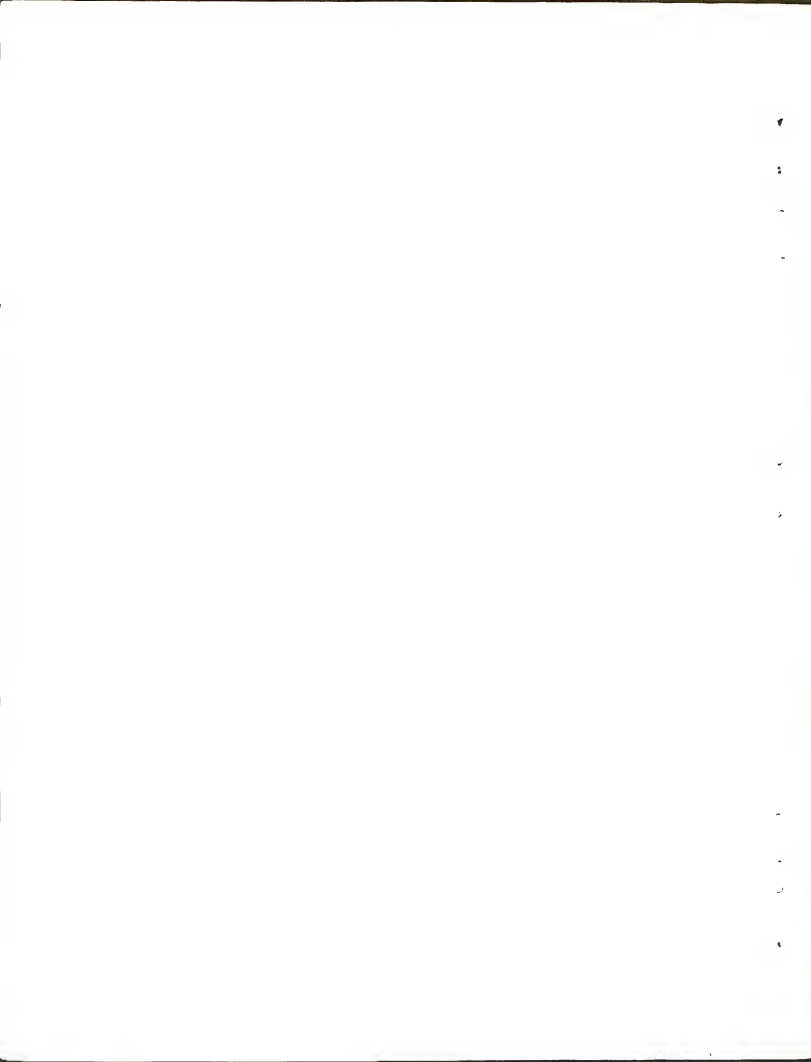
the thirteen western states. In its efforts to achieve these objectives, WICHE appreciates having received the generous support and assistance of the Economic Development Administration, the Jessie Smith Noyes Foundation, the National Endowment for the Humanities, the National Science Foundation, and of innumerable local leaders and community organizations, including the agency that sponsored this intern project.

For further information, write Bob Hulinghorse, Director, Resource Development Internship Program, WICHE, Drawer "P", Boulder, Colorado, 80302, (303) 449-3333.



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in this report  
are those of the author.  
They do not necessarily reflect  
the views of the  
WICHE Commissioners or WICHE staff.

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